# SUPREME COURT OF THE UNITED STATES.

No. ~~172.~~ 98.

THE BALTIMORE STEAM PACKET COMPANY, OWNER OF THE STEAMER LOUISIANA, APPELLANT,

vs.

THE FLUSHING COLLEGE POINT AND NEW YORK STEAM FERRY COMPANY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MARYLAND.

GOVERNMENT PRINTING OFFICE.

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1 THE UNITED STATES OF AMERICA, *District of Maryland, to wit:*

At a circuit court of the United States for the fourth circuit, in and for the Maryland district, begun and held at the city of Baltimore on the first Monday in April, in the year of our Lord one thousand eight hundred and sixty-three—

Present: The honorable Roger B. Taney, chief justice of the Supreme Court of the United States; William F. Giles, judge Maryland district; William Price, esq., attorney; Washington Bonifant, esq., marshal; Thomas Spicer, clerk—

Among other were the following proceedings, to wit:

THE FLUSHING COLLEGE POINT AND NEW YORK STEAM FERRY COMPANY
*vs.*
THE STEAMER LOUISIANA.

Be it remembered that heretofore, to wit, on the fourth day of May, in the year of our Lord one thousand eight hundred and sixty-three, the said Flushing College Point and New York Steam Ferry Company, by James Mason Campbell and Bernard Carter, its proctors, file in the circuit court here a transcript of a record from the district court of the United States in and for the Maryland district, in the words and of the tenor following, to wit:

THE UNITED STATES OF AMERICA, *District of Maryland, to wit:*

At a district court of the United States, in and for the Maryland district, begun and held in the city of Baltimore on the first Tuesday in December, in the year of our Lord one thousand eight hundred and sixty-two—

2 Present: The honorable William F. Giles, judge of Maryland district; William Price, esquire, attorney; Washington Bonifant, esq., marshal; Thomas Spicer, clerk—

Among other were the following proceedings, to wit:

THE FLUSHING COLLEGE POINT AND NEW YORK STEAM FERRY COMPANY
*vs.*
THE STEAMER LOUISIANA.
} Libel filed 28th November, 1862.

*Attachment.*

THE UNITED STATES OF AMERICA, *District of Maryland, to wit:*

[SEAL.] To the marshal for Maryland district, greeting:

We command you that you attach, seize, take, and safely keep the steamer Louisiana, her engines, machinery, boats, tackle, apparel, and furniture, to answer the libel of the Flushing College Point and New York Steam Ferry Company, a corporation duly incorporated by the laws of the State of New York, in a cause of collision, civil and maritime, and how you shall execute this precept make known to us in our district court for the district aforesaid, at the United States court-room, in the city of Baltimore, on the first Tuesday in December next, and have you then and there this writ.

Witness the honorable William F. Giles, judge of our said district court, the first Tuesday in September, in the year of our Lord one thousand eight hundred and sixty-two.

J. M. C.
B. CARTER.

THO'S SPICER, *Clk District Ct.*

Issued 28th November, 1862.

3 *Marshal's return.*

Attach'd 2nd Dec'r 1862. Released by stipulation Dec'r 5th, 1862.
WASHINGTON BONIFANT,
*U. S. Marshal.*

*Stipulation.*

THE UNITED STATES OF AMERICA, *District of Maryland, to wit:*

Be it remembered that on this fifth day of December, in the year of our Lord one thousand eight hundred and sixty-two, before me, John Hanan, a commissioner appointed by the circuit court of the United States for the fourth circuit, in and for the Maryland district, pursuant to an act of Congress entitled "An act for the more convenient taking of affidavits and bail in civil cases depending in the courts of the United States," appears the Baltimore Steam Packet Company, by Moore Falls, its president, and submits itself to the jurisdiction of the district court of the United States for the district of Maryland, and consents to bind itself, and doth acknowledge itself to be bound, in the sum of four thousand dollars for the claimants of the steamer Louisiana, her boats, tackle, apparel, and furniture, unto the Flushing College Point and New York Steam Ferry Company, to perform and fulfil the final order and decree of the said district court; and in case of an appeal from such final order and decree of the said district court, then the final order and decree of the circuit court of the United States for the fourth circuit, in and for the Maryland district; and in case of an appeal from such final order and decree of the said circuit court, then the final order and decree of the Supreme Corrt of the United States, in a certain cause
4 now depending in the said district court, wherein the said The Flushing College Point and New York Steam Ferry Company are libellants, and the claimants of the said steamer Louisiana are respondents; and unless it so do, it consents that execution shall issue against its goods, chattels, lands, and tenements, wheresoever found, or to be found; and as evidence of its assent to said stipulation it has caused its corporal seal to be hereto attached.

[SEAL.] MOORE N. FALLS, *Pres't.*

Acknowledged before me.

JOHN HANAN, *U. S. Comm'r.*

*Libel.—In admiralty.*

To the honorable William F. Giles, judge of the district court of the United States for the district of Maryland:

The Flushing College Point and New York Steam Ferry Company, a corporation duly incorporated by the laws of the State of New York, owner of the steamboat Flushing, hereinafter mentioned, exhibits this, its libel, against the steamer Louisiana, (whereof William Porter is, or lately was, master,) now lying in the port of Baltimore, in the district of Maryland aforesaid, and within the admiralty and maritime jurisdiction of this honorable court, her engines, machinery, boats, tackle, apparel, and furniture, and against all persons lawfully intervening for their interest therein, in a cause
5 of collision, civil and maritime; and thereupon the said Flushing College Point and New York Steam Ferry Company doth allege and articulatory propound as follows, to wit:

First. That on the 8th day of June, in the year eighteen hundred and sixty-two, or thereabouts, the said steamboat Flushing was lying in Hampton Roads, in the Chesapeake bay, and within the flow and reflow of the waters of the sea, and partly sunk on Hampton bar, near to the Fortress Monroe; that the place where the said steamer then lay was entirely clear of the channel, and altogether out of the way of vessels, steam or sail, coming into and going out from Fortress Monroe, or any other landing or stopping place for vessels adjacent thereto; that on said day, and at the time of the collision hereinafter mentioned, the said steamboat was being operated upon by men employed by the libellant to raise the said steamboat.

Second. That on the said 8th day of June, 1862, the said steamer Louisiana, whereof the said William Porter was then master, arrived in Hampton Roads aforesaid, and was, by those in charge of her, moored to a wharf at the said Fortress Monroe; that on the said day, and about three o'clock p. m. of the said day, the said steamer Louisiana parted her said moorings, and, under a heavy wind from the northeast, drifted up the said Hampton Roads, broadside against and across the stern of the said steamboat Flushing, lying as aforesaid, and the said steamer Louisiana, by the said collision, totally destroyed the after cabin of the said steamboat Flushing, carried away all of the joiner's work as far forward as her wheel, broke the
6 main deck around the stern and starboard side, and otherwise greatly injured and damaged the said Flushing.

Third. That the breaking away from her moorings and drifting of the said Louisiana, and her collision with the said Flushing, all, as in the last article propounded, were not, nor was either of them, the result of an unavoidable accident, or of any , but, on the contrary, were the result of gross carelessness and mismanagement on the part of the officers and crew, and of those having charge of the said Louisiana on the day when the collision with the said Flushing took place, as aforesaid.

Fourth. That the said steamer Louisiana was not properly or securely moored to the wharf at which she was lying on the day of the said collision, and broke from her moorings because of the insufficiency and inadequacy of the same.

Fifth. That while the said Louisiana was, on the said 8th day of June, lying moored, as aforesaid, to the said wharf, and before she broke away from her said moorings, as above in the 3rd article propounded, the engineer and other officers of the said steamer Louisiana, whose business it was to attend to the steam apparatus and machinery in said steamer, in gross negligence of their duty in the premises, allowed the steam in the boiler of the said steamer to get so low that when the said steamer parted her moorings, as above propounded, the engineer of said steamer could not
7 control her motions or course, and she drifted at the mercy of the waves; that there were but few vessels in said roads at the time of the said collision, and plenty of sea room for the management of the said Louisiana, and that, if her said engine and motive power had been in proper working order, she could have been readily kept clear of the said Flushing.

Sixth. That at the time the collision above propounded took place between the said steamers, as well as during all the time that said steamer Louisiana was drifting after she had parted her moorings as aforesaid, it was impossible for the said Flushing to get out of the way of the said Louisiana.

Seventh. That the said libellant, at the time of the said collision, and at the present time, is the owner of the said steamboat Flushing, and that by reason of careless, negligent, unskilful, and improper management of the said steamer Louisiana, and of the collision thereby occasioned of the said steamer with the said steamboat, the libellant hath sustained damages to

the amount of two thousand dollars, for which he claims reparation in this suit.

Eighth. That all and singular the premises are true. Wherefore the libellant prays that process in due form of law may issue against the said steamer Louisiana, her engines, machinery, her boats, tackle, apparel, and furniture, and that this honorable court will pronounce for the damages aforesaid, and decree the same to be paid with costs, and for such other and further relief and redress as to right and justice may appertain, and the court is competent to give in the premises.

J. M. CAMPBELL,
BERNARD CARTER,
*Proctors for Libellant.*

8 *Claim.*

To the honorable William F. Giles, judge of the United States district court of Maryland:

And now comes Moore N. Falls, the president of the Baltimore Steam Packet Company, who are the owners of the steamer Louisiana, her boats, tackle, apparel, and furniture, against which a libel has been filed in this court by the Flushing College Point and New York Steam Ferry Company, and says, that the said steamer Louisiana is owned by the Baltimore Steam Packet Company, and that he is duly authorized by the said company to put in a claim on their behalf to said steamer.

MOORE N. FALLS,
*Pres't B. S. P. Co.*

Subscribed and sworn to this 5th day of December, before me.
JOHN HANAN, *U. S. Comm'r.*

*Answer.*

The answer of the Baltimore Steam Packet Company to the libel and complaint of the Flushing College Point and New York Steam Tug Company, in the district court of the United States *in the district court of the United States* in and for the district of Maryland, in admiralty, exhibited.

This respondent, in answer to the said libel and complaint, and to the several articles thereof, respectively answers and says as follows:

1st. In answer to the first article of said libel this respondent says, that it admits it to be true that the said steamboat Flushing was, on the day in that behalf in said article mentioned, lying in Hampton Roads,
9 in the Chesapeake bay, partly sunken on Hampton bar, near to Fortress Monroe, and within the flow and reflow of the waters of the sea, but, as this respondent is informed and propounds, within the limits of the harbor there, and in a very improper and dangerous position. This respondent does not admit that the said steamboat Flushing was, on the day in that behalf in said article mentioned, lying in Hampton Roads, in the Chesapeake bay, partly sunken on Hampton bar, near to Fortress Monroe, and within the flow and reflow of the waters of the sea, but, as this respondent is informed and propounds, within the limits of the harbor there, and in a very improper and dangerous position.

This respondent does not admit that the said steamboat Flushing was, at the time mentioned in said first article, being operated upon by men in efforts to raise her; but, on the contrary, as this respondent has been informed, and believes and propounds, the said steamboat Flushing was then and there lying partly sunken and derelict, and that said steamboat had

been lying so sunken and derelict with no person on board in charge of her, and actually abandoned and forsaken, and a public nuisance, and in the highway of vessels navigating the waters of that region of the high seas.

2nd. In answer to the second article of said libel this respondent says, that, if true, that on the said day mentioned the said steamer Louisiana was in Hampton Roads, and was moored there to a wharf at Fortress Monroe in the manner hereinafter propounded; and that at or about the hour of said day in said article mentioned the said steamer Louisiana, from the combined action of the wind and tide, as hereinafter propounded, parted her said moorings, and having afterwards cast anchor, as hereinafter propounded, the chain by which said vessel was held to her anchor gave
10 way, as hereinafter propounded, and notwithstanding all efforts which it was possible for those on board of said steamer, under the circumstances, and with due regard to the safety of other vessels then and there in said waters, and driven about by the fury of the winds and waves, and which it was very difficult to avoid encountering, the said steamer Louisiana, by the *vis major* of the combined action of the wind, tide, and waves, was unavoidably, and against the will and efforts of those in charge of said steamer Louisiana, driven against the stern of the said steamer Flushing, and did carry away a part of the joiner's work and injured a part of the main deck of said steamer Flushing. And, as a part of the answer to said second article, this respondent alleges and propounds that the said steamer, at the said time mentioned, was under charter to the government, and in the service of the government of the United States, and that by the terms and stipulations of said charter the said government undertook and was bound to coal said steamer during the continuance of the said charter. And this respondent further alleges and propounds that the said steamer Louisiana, in obedience to orders emanating from the government of the United States, and given by competent authority in that behalf, had proceeded to the said wharf at Fortress Monroe for the purpose of taking in coal; that the said wharf was presented to, and not selected by, the master of said vessel, and was of such narrow front that it was not possible for the said steamer Louisiana, from her length, to lay flush alongside of said wharf; and that, in consequence thereof, uncommon pains were taken securely and, as was supposed, safely to moor said steamer to said
11 wharf. Accordingly, the said steamer was fastened by four new cables, one of them a seven-inch cable, and each of the three other cables was eight and one-half inches cables, and which it was expected would be secure fastenings, and which, except under very extraordinary circumstances, would have proved secure fastenings of said steamer, notwithstanding the strong stiff east wind blowing at the time, and notwithstanding the strong tide which had set in from the east; and in consequence of the existence of said wind and tide, and their concurrent action, such particular and extraordinary precaution as to the fastenings of said vessel to said wharf had been adopted.

And this respondent, further answering, alleges and propounds that the wind, which had before been violent, suddenly greatly increased in its fury, and acting upon the waters of the tide, increased the magnitude and momentum of the waves of the surf, so that combined action of the fury of the wind and the violence and strength of the waves upon the hull of the said steamer Louisiana, the stern of the said steamer was forced from her position, the cable giving way under the pressure, and the violence with which the said stern was driven round forced the said steamer from her moorings, the strong cleets whereby the vessel was attached in front to her cable being torn away; so that the vessel, being liberated from the restraint of the cables, was, until her engine could be put in motion, left completely at the mercy of the wind and waves.

But this respondent states, and alleges, and propounds, that in a very short time the engine in motion in obedience to signals to back, there being at the time a sufficient head of steam in the boiler, and the steamer was sufficiently backed to run out the anchor, and the steamer for a brief space held to her anchor; but so great was the fury of the storm, and so turbulent the motion of the waters of the sea, that the strain to which it was
12 exposed caused the chain of the anchor to part, and the steamer was again free of the control of any restraint of fastenings. Those on board the steamer adopted such expedients as nautical skill and the actual state of the case indicated as proper and likely to insure safety to the steamer herself, and at the same time to avoid collision with any other vessel in the vicinity.

This respondent is not able to allege or propound the various orders given and obeyed, nor the reasons for giving such orders, inasmuch as the first mate of the Louisiana, and who was in command of the Louisiana at the time, is absent on service, and it has not been practicable to communicate with him up to the time of filing this answer.

But this respondent has been informed, and believes, and alleges, and propounds, that all necessary and proper orders were given, and that the same were promptly and faithfully obeyed; that nothing was done which nautical skill or good seamanship would have deemed inexpedient or unnecessary, and that everything was done which nautical skill and good seamanship could enable those on board to do under the circumstances.

And this respondent alleges and propounds that said steamer was properly manned, and in all respects properly appointed and equipped; and further, that the collision with the steamboat Flushing was not the consequence of any fault or default on the part of those on board of said steamer Louisiana, or of her owner.

3. In answer to the third article, this respondent alleges and pro-
13 pounds that the breaking away of said steamer Louisiana from her moorings, and the drifting and collision mentioned in said third article, were the result of unavoidable accident, and of the *vis major* of the storm, as already alleged and propounded by the respondent; and were not, nor was either of them, the result of any carelessness or mismanagement on the part of the officers and crew of the Louisiana, or any of them, as propounded in said third article.

4. In answer to the fourth article, this respondent alleges and propounds that the allegations of said fourth article are untrue in many particulars.

5. In answer to the fifth article, this respondent denies the same to be true in every particular. On the contrary, this respondent alleges and propounds that there was sufficient steam in the boiler of the engine of the Louisiana, at the moment the said steamer parted her moorings, to enable the engineer, who was on board and at his proper post, to control the motion and course of the said steamer; and the said steamer, in fact, was carried, in obedience to the orders of the first mate, who was then in command, to a proper place for anchoring, and the anchor was cast accordingly, as already propounded; but the extreme violence of the storm, which caused the strong chain of the anchor to part, overmastered all possible efforts to control thereafter efficiently the motions or course of said steamer. It was the *vis major* of the storm, not the want of steam on the boilers, which caused the collision between said steamer and said steamboat of the libellant.

6. In answer to the sixth article this respondent says, that it is true that it was impossible for the steamer Flushing, at the time said collision
14 took place, to get out of the way of the said *of the said* steamer: and for this plain reason, that she was lying on Hampton bar, with no person on board, in an abandoned state.

7. In answer to the 7th article this respondent says, that it was no knowledge of the ownership of the said steamboat Flushing at the time of said collision, or at any other time. From the condition in which the said steamboat was lying on Hampton bar, and from the length of time she had been so lying, this respondent insists that she was really derelict and abandoned, and was certainly not in the possession, care, or charge of any person whatever, nor was there any living creature on board. In answer to the residue of said seventh article, this respondent denies again the negligence and want of care imputed to those in charge of the Louisiana, and further denies that the damage occasioned by said collision to said steamboat Flushing is of the large pretended amount stated in said article.

8. In answer to the eighth article this respondent denies that the allegations of said libel are true.

9. And, by way of further answer to the said libel, this respondent alleges and propounds that the said steamboat Flushing, at the time of said collision, was not possessed or owned by the libellant, but was derelict and abandoned; that said steamboat had been lying on Hampton bar in such derelict and abandoned state for a period of more than six weeks, and although it was possible by proper efforts to have raised her, yet no such proper efforts were made by the libellant; that said steamboat, in the
15 state position and place where she was lying was an existing public nuisance; and if the libellant assumes the position of being the owner of said steamboat up to and at the time of said collision, then this respondent insists that the libellant was guilty not merely of gross laches and unpardonable negligence in permitting said vessel to remain in her sunken condition, but that said libellant was, in fact, guilty of a public wrong in so permitting her to lie in such condition, and that said libellant's complaint, for that reason alone, ought be dismissed; and further, that forasmuch as the Louisiana sustained damage, by reason of said collision, to the extent of upwards of two hundred and fifty dollars, that said libellant ought to be held answerable therefor. And this respondent alleges and propounds that the libellant, by suffering said steamboat to remain in her sunken condition, as aforesaid, was the author of any loss or damage which may have resulted from said collision, and can have no just claim in any court of justice for remuneration for alleged loss from said collision.

And this respondent prays that said libel may be dismissed, and that said libellant may be condemned in costs, and be declared chargeable for the damage sustained by the respondent from said collision.

WM. SCHLEY,
*Proctor for Respondent.*

M. N. FALLS, *Presd't B. S. P. Co.*

Subscribed and sworn to this 29 day of December, 1862, before me.

JOHN HANAN,
*U. S. Commissioner for Maryland.*

16 *Decree.*

In the district court of the United States in and for the district of Maryland. December term, 1862.

THE FLUSHING COLLEGE POINT AND NEW YORK STEAM FERRY COMPANY, OWNER OF THE STEAMBOAT FLUSHING,
*vs.*
THE BALTIMORE STEAM PACKET COMPANY, OWNER OF THE STEAMER LOUISIANA.

The above cause being ready for hearing, and having been heard on the

pleadings and upon the testimony of witnesses orally examined before the court, and having been agreed by the proctors of the respective parties, and fully considered by the court, it is therefore, this 6 day of January, 1863, by the district court of the United States in and for the district of Maryland, and by the authority of the same, adjudged, ordered, and decreed that the libel in this case be, and the same is hereby, dismissed, each of the parties to pay their own costs.

WILLIAM F. GILES.

From which said decree, so as aforesaid passed, the said Flushing College Point and New York Steam Ferry Company, by its proctors aforesaid, in open court here, hath prayed an appeal to the circuit court of the United States for the fourth circuit, in and for the Maryland district, to be held at the city of Baltimore on the first Monday in April next; and to it it is granted.

Thereupon it is ordered by the court here that the record and proceedings aforesaid, with all things relating to the same, be transmitted
17 to the said circuit court, and the same are transmitted accordingly.

*Appeal bond.*

Know all men by these presents that we, F. Konig, of New York city, in the State of New York, and Thomas Poultney, of Baltimore, are held and firmly bound unto the Baltimore Steam Packet Company in the just and full sum of two hundred and fifty dollars, lawful money of the United States, to be paid to the said Baltimore Steam Packet Company, its certain attorney, successors, or assigns, to which payment, well and truly to be made and done, we hereby bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated this 28th day of February, in the year of our Lord one thousand eight hundred and sixty-three.

Whereas heretofore, to wit, on the twenty-eighth day of November, 1862, the Flushing College Point and New York Steam Ferry Company filed their libel in the district court of the United States, in and for the Maryland district, against the steamer Louisiana, to recover damages caused by a collision between the said steamer Louisiana and the steamboat Flushing:

And whereas, at a district court of the United States in and for the Maryland district, and held at the city of Baltimore on the first Tuesday in December, in the year of our Lord one thousand eight hundred and sixty-two, the said court made and passed the following decree, to wit: "The above cause being ready for hearing, and having been heard in the pleadings and upon the testimony of witnesses orally examined before the court, and having been argued by the proctors of the respective parties, and fully
18 considered by the court: It is thereupon, this 6th day of January, 1862, by the district court of the United States, in and for the district of Maryland, and by the authority of the same, adjudged, ordered, and decreed that the libel in this case be, and the same is hereby, dismissed, each of the parties to pay their own costs." From which said decree, so as aforesaid passed, the said Flushing College Point and New York Steam Ferry Company hath prayed an appeal to the circuit court of the United States for the fourth circuit, in and for the Maryland district, to be held at the city of Baltimore on the first Monday in April next, and to it it is granted:

Now the condition of the above obligation is such, that if the said Flushing College Point and New York Steam Ferry Company shall well and truly prosecute with effect its said appeal, and pay unto the said Baltimore Steam Packet Company, its certain attorney, successors, or assigns, all such costs and charges as may be awarded unto it by the said circuit court in

case the appellant shall fail to make good its said appeal, then the above obligation to be void and of none effect; otherwise to be and remain in full force and virtue in law.

F. KONIG. [SEAL.]
T. POULTNEY. [SEAL.]

Bond approved May 4th, 1863.

WILLIAM F. GILES.

In testimony that the aforegoing is a true copy of the record and proceedings of the district court aforesaid, I hereunto subscribe my name
19 and affix the seal of the said district court this fourth day of May, in the year of our Lord one thousand eight hundred and sixty-three.
[SEAL] THO'S SPICER, *Clk Dis't Ct.*

Be it remembered that on the 11th day of February, 1863, the parties aforesaid, by their attorneys aforesaid, filed in the circuit court here an agreement in the words following, to wit:

In the circuit court of the United States for Maryland district.—In admiralty.

THE FLUSHING COLLEGE POINT AND NEW YORK STEAM FERRY COMPANY
*vs.*
THE STEAMER LOUISIANA.

It is agreed in this cause that a commission shall be issued in this cause to Richard E. Stilwell, esq., of New York city, for the purpose of taking testimony with leave to either party, in addition to the interrogatories which may be sent with the commission, to put such other interrogatories at the time of the examination of the witnesses as either party may desire. Ten days' previous notice to be given of the time of execution of said commission.

J. M. CAMPBELL,
BERNARD CARTER,
*For Libellant and Appellant.*
WM. SCHLEY, *for Appellee.*

And afterwards, to wit, on the 12th day of February, 1863, the
20 Flushing College Point and New York Steam Ferry Company, by their proctors aforesaid, issues out of the circuit court here a commission directed to Richard E. Stilwell in the words following, to wit:

THE UNITED STATES OF AMERICA, *District of Maryland, to wit:*

To Richard E. Stilwell, of New York city, esq., greeting:

Be it known that you are appointed commissioner to examine evidence in a cause now depending in the circuit court of the United States for the fourth circuit, in and for the Maryland district, between the Flushing College Point and New York Steam Ferry Company, libellant and appellant, and the steamer Louisiana and owner, claimant and appellee. Therefore you are requested, having first taken the oath hereunto annexed, and also administered the annexed oath to the person whom you shall appoint as clerk to attend the execution of this commission, that at such time and place as to you shall seem convenient, you cause to come before you all such evidence as shall be named or produced to you by either the appellant or appellee; and that you examine them upon their corporal oaths, to be by you administered upon the Holy Evangely of Almighty God, touching their knowledge or remembrance of anything that may relate to the cause aforesaid; and having reduced the depositions of the witnesses, so taken by you, into writ-

ing, you send the same, with this commission, closed under your hand and seal, to the said circuit court with all convenient speed.

Witness the honorable R. B. Taney, chief justice of our Supreme Court, the first Monday in December, in the year of our Lord one thousand eight hundred and sixty-two.

THOS. SPICER, *Clk Circ't Court.*

Issued 12 July, 1863.

21 The execution of this commission appears in certain schedules hereto annexed.

R. E. STILWELL,
*U. S. Comm'r for the south. dis't, New York.*

*Commissioner's oath.*

You shall, according to the best of your skill and ability, truly, faithfully, and without partiality to any or either of the parties, take the examinations and depositions of all and every the witness and witnesses produced and examined by virtue of the commission hereunto annexed, upon the interrogatories now, or which may hereafter, before the said commission closes, be produced to and left with you by either party: so help you God.

R. E. STILWELL.

Subscribed and sworn to before me, this 17 day of February, 1863.

KENNETH G. WHITE,
*Clerk of the Circuit Court of the U. S. for the S. district of New York.*

*Clerk's oath.*

You shall truly, faithfully, and without partiality to any or either of the parties, take, write down, and transcribe the depositions of all and every witness and witnesses produced before and examined by the commission named in the commission hereunto annexed, as far forth as you are directed and employed by the said commission to take, write down, and transcribe the said depositions, or any of them: so help you God.

22 Circuit court of the U. S., Maryland district.

THE FLUSHING COLLEGE POINT AND NEW YORK STEAM FERRY COMPANY
*vs.*
THE STEAMER LOUISIANA.

*Interrogatories to be propounded to witnesses on part of the libellant in above cause under the commission to Richard Stilwell, of New York city.*

1. What is your occupation, and what connection, if any, had you with the steamer Flushing during the year 1862? To whom does said steamer belong, now and then; when was she built; of what tonnage is she; and for what used?

2. Were you master of said steamer in March, 1862? If so, in what service was she then engaged and at what rate; and what, if anything, happened to said steamer in that month, and when and how; and what was her value before the same?

3. After said Flushing got aground, as above stated, how much was she sunk on Hampton bar? Describe her then condition and position, how long she remained there, when she was raised, where carried, and by whom. Describe what steps were taken, and what efforts made, to raise said steamer,

and what circumstances and obstacles, if any, had to be contended against in the interval between said sinking and raising, and was it for the interest of her owners to raise her as soon as possible?

4. Are you acquainted with the harbor of Hampton Roads and its various locations, including the positions relative to each other; if the
23 channel deep and shallow water, the anchoring places of vessels large and small size, Hampton bar, Rip Raps, and each of the wharves at Fort Monroe called the old wharf and new wharf? If yea, describe the same, and the distances of each from the other.

5. State, if you know, whether at any time in said year, 1862, the steamer Louisiana, belonging to the line from Baltimore to Norfolk, came into collision with the said Flushing while lying at Hampton roads, as above described; and if so, when said collision occurred; on what day, and the hour of the day, as near as possible, and who was master of said Louisiana on said day; where you were at the time of said collision, and what you saw of the same, and when you saw it; and how long did said collision continue when the Flushing was struck? And state particularly what damage was thereby done, and what in money is the measure thereof.

6. What became of Louisiana after said collision; did she come to anchorage; if so, how, and how long did she there remain; and when, and under what circumstances, did she leave?

7. What was the condition of the sea and weather on the day of said collision, both at the time of said collision and previous thereto, and afterward? stating, in answer to this question also, what was the state of the tide at time of collision and before.

8. Did you see the Louisiana on said day previous to the collision; and where was she moored, if anywhere, and when did she arrive at same; did you see her part her moorings; or after she had parted them, and be-
24 fore she came into collision with the said Flushing, what course did she take from the wharf towards said Flushing; did she drift, or how did she go; and were there many or few vessels or steamers in the Roads on this day, and where were those that were there; and were there any at anchor or otherwise in the path the said steamer took towards Flushing; how far from the old wharf in each direction was the nearest vessel when Louisiana broke away, and while she was going towards the Fushing; and how far was Flushing from said old wharf? Was the sea-room enough for the Louisiana, after she broke away, to have navigated clear of the Flushing, if she had had sufficient steam to have controlled her motion at the will of her commander, and if she had been properly handled?

9. Was there any other steamer or vessel moored at the old or new wharves above mentioned on said day, and at or about the time said Louisiana broke away? If so, did any of them part the cable, break away, or on other vessels come into collision; did any other accident happen to shipping or steamers at Fort Monroe or in the harbor on said day?

10. Did you see the anchors of the Louisiana and their chains, or either of the same? If so, what was size of chain of smallest anchor and of largest, and what the weight of said anchors; was said chains, or either of them, broken when you saw them; and if so, how did it occur?

11. Was said small chain and anchor large enough to have brought said Louisiana to anchor on said day, between new wharf and Flushing, or between old wharf and new wharf; what size anchors and chains should a steamer of one thousand tons have in order to be provided and equipped for emergencies?

25 12. After the said Louisiana parted her moorings on said day what courses should have been pursued by those in charge of her as to the use of her anchors, in order to bring said steamer to anchor, or to

put her head to the winds, and which anchor should have been tried; would her large anchor have arrested her course in time to have prevented the collision if it had been ready for immediate use at the time said moorings parted; should both of said anchors have been thrown out; if not both, on which side should the one anchor have been thrown out; and why and when could said steamer have been brought to anchor before striking the Flushing?

13. What space would have been sufficient around said old wharf to have enabled those in charge of said Louisiana to have brought said steamer to anchor, or to have enabled them by the use of her steam to have controlled and directed her course, provided said steamer had had sufficient steam on to have controlled her motion at the will of those in charge of her, and provided both of her anchors had been in readiness to use and had been proper anchors; and how long would be required to bring said steamer to anchor?

14. How long was the Louisiana in drifting from the old wharf to the Flushing, and if her anchors had been used with reasonable skill and she have been brought to anchor before coming into contact with the Flushing?

15. What was the difference of the strain on the moorings of said Louisiana when she parted from that to which they had been exposed during the morning; should additional precautions in the way of strengthening her fastenings been taken owing to said difference; and if any, what
26 sized cables are manufactured for the purpose of mooring steamers, and what size should be used; and what number, when there is an apprehension of the possibility of a greater pressure?

16. How should said steamer have been moored to said wharf; and suppose she should part her steam cables, what would be the consequence on bow cables as to additional pressure and probability of breaking them?

17. To what do you attribute the breaking away of said Louisiana on said day?

18. Had you any conversation with the officers of said Louisiana on said day? If so, with whom, when, and what was said?

19. Suppose a steamer of a thousand tons moored to a wharf, say at Fortress Monroe, with a strong east wind or northeast wind blowing in the morning when she was first moored and an ebb tide, and that said wind continued blowing at same rate or slightly increased rate till three o'clock; and afterwards, and at three o'clock, or thereabouts, said steamer parted her moorings; and that the master of said steamer knew that the tide would change to flood before three o'clock; should additional precautions, in the way of strengthening her fastenings, have been taken to prevent said steamer from breaking away?

20. Suppose a steamer of 1,000 tons parts her moorings at old wharf at Fort Monroe, and commences to drift with the wind and flood tide, both from the east, towards new wharf with her bow to the shore; on which side should her anchor be thrown out? And state reasons in your answer to this.

27 21. How much sea-room would such a steamer, with a pretty fresh blow from the northeast, and flood tide, require to come to anchor (provided her anchors were suitable) to enable her to get control of her course, provided she had steam enough on to move at the will of her commander?

*Questions for mechanics who have or may have repaired said Flushing since the collision.*

1. What is your occupation and age; where do you live; and have you repaired any part of the steamer Flushing since August, 1862? State particularly what you have repaired, for whom, and what the same cost; state,

also, whether you knew the Flushing prior to March, 1862, and what was the damage done to said Flushing by the injuries which had been done to her when brought to you for repairs; stating, if you know, how the same were occasioned, and how much, in money, said steamer was damaged by said injuries.

*Question for all the witnesses.*

Do you know any other matter or thing pertinent to the issue in this case? If so, state the same.

J. M. CAMPBELL,
BERNARD CARTER,
*For Libellant and Appellant.*

True copy.

28 THOS. SPICER, *Clk.*

29 In the circuit court of the United States in and for the fourth circuit and district of Maryland.

FLUSHING COLLEGE POINT AND NEW YORK STEAM FERRY COMPANY
*vs.*
THE BALTIMORE STEAM PACKET COMPANY.

*Cross-interrogatories to be propounded on behalf of the appellee to each and every witness who may be produced, sworn, and examined on the part and behalf of the appellant before Richard E. Stillwell, esq., commissioner, upon the interrogatories designated as "Questions for mechanics who have or may have repaired said Flushing since the collision."*

1st. If you shall say you repaired any part of the steamer Flushing since August, 1862, then state precisely and definitely the part or parts so repaired, so that a person reading your answer may be able to form a correct notion of the locality and extent of any such repairs, what kind and quantity of timber, if any, or lumber, if any, or both, were used by you in making such repairs. File a copy of the account, if any was rendered by you, for such repairs; and if no account was rendered by you, then file, as part of your testimony, a bill of particulars of said repairs. If you shall speak of damage done to the Flushing and shall state how the same was occasioned, then state the same and means of your knowledge. The object is to separate your knowledge in the premises from mere representation of others.

WM. SCHLEY, *for Appellee.*

True copy.

THOS. SPICER, *Clk.*

30 Depositions of witnesses produced and examined the 17, 18, 19, and 25th days of February, 1863, at the city of New York, under and by virtue of a commission issued out of the circuit court of the United States for the district of Maryland, in a certain cause therein depending between the Flushing College Point and New York Steam Ferry Company, libellant and appellant, and the steamer Louisiana and owner, claimant and appellee.

George W. Howe, being duly and publicly sworn, pursuant to the directions hereto annexed, and examined on the part of the libellants, doth depose and say as follows, to wit:

1. To the first interrogatory he saith, my name is George W. Howe, occupation shipmaster, and have been such 24 years. After the steamer Flushing was sunk on Hampton bar I was employed by Johnson & Higgins to raise said steamer, and I was engaged in raising her some 60 days. I do not know to whom said steamer belongs. I do not know when she was built. I don't know her tonnage, nor for what she was used.

2. To the second interrogatory he saith, I was not master of said steamer in March, 1862, and do not know in what service she was engaged, or at what rates, and do not know what happened to said steamer in that month.

3. To the 3d interrogatory he saith, said steamer Flushing, when I first saw her sunk, the bow was about two feet under water at high water,
31 and her stern was above water entirely, and all her wheel houses out of the water. She remained there, as I have already stated, 60 days after I was employed. I do not recollect the exact day when she was raised; after she was raised she was carried to Norfolk and then to New York. The efforts usually made to raise steamers in her position were used on this occasion, and every effort was made possible to get her up, for which there was an enormous outlay. There was a great deal to contend with in raising her; where she lay she was exposed to easterly winds and heavy sea, which prevented our working, except a small part of the time. It was to the interest of her owners to raise her as soon as possible.

4. To the fourth interrogatory he saith, I am acquainted with the harbor of Hampton Roads and its various localities, mentioned in the said interrogatory. The old wharf—that is to say, the wharf furthest east—is about 500 yards from the other wharf, known as the new wharf. It is about 400 yards from the new wharf to where the Flushing was sunk. The place where the Flushing lay is to the westward of the new wharf, as the latter is westward of the old wharf. The place of anchorage of the size of the Louisiana is southeast of the old wharf, about a half a mile distance. The direction of said anchoring place from the old wharf is about right angles with the direction of the position of the Flushing to the old wharf.

5. To the 5th interrogatory he saith, I know nothing of the matter as contained in the fifth interrogatory.

6. To the sixth interrogatory he saith, I know nothing of the matter as contained in the sixth interrogatory.

7. To the seventh interrogatory he saith, I know nothing of the
32 matter as contained in the seventh interrogatory.

8. To the 8th interrogatory he saith, I know nothing of the matter as contained in the 8th interrogatory.

9. To the 9th interrogatory he saith, I know nothing of the matter as contained in the ninth interrogatory.

10. To the 10 interrogatory he saith, I know nothing of the matter as contained in the 10th interrogatory.

11. To the 11th interrogatory he saith, I know nothing as to the size of the chain or the anchor spoken of as belonging to the said steamer. There is a scale regulating the size of anchors and chains. I should suppose an anchor of 2,000 pounds for her best bower anchor, an anchor of 1,500 or 1,600 for her small bower anchor, and for postmate chain.

To the 12th interrogatory he saith, supposing there was a strong northeast wind and that the said Louisiana parted her moorings at the old wharf, the parties in charge should let go her starboard anchor—that is to say, supposing her bow was to the shore—and then her other anchor—that is to say, her port anchor; I say that her starboard should have been let go, because it was her weather anchor, and her port anchor was her lee anchor. The reason why I say the weather anchor should have been let go first, is, that it would have gone clear of the stern, while the port anchor was liable

to come in contact with the stern. Her large anchor, or starboard
33 anchor, would, in my judgment, brought the said Louisiana up, if it had been let go as soon as she broke adrift; and, in my judgment, it should have been let go at once; and, indeed, both of them should have been let go at once; and, indeed, both of them should have been let go as soon as possible. When she got abreast of the new wharf, if her starboard anchor had been let go, and, much more, if both of her anchors had been let go, she would have been brought up before striking the Flushing.

To the 13th interrogatory he saith, I think if both those anchors had been ready for use when said steamer broke adrift she could have been brought up by them before she got to the new wharf; that is, supposing she broke adrift at the old wharf. If the said steamer had sufficient steam to have worked her, or controlled her motion, she could have been brought to anchor more readily and with less danger of parting her chains.

To the 14th interrogatory he saith, I know nothing of the matter contained in the first part of the interrogatory; as to the latter part, I have already answered it.

To the 15th interrogatory he saith, I know nothing about the moorings of the Louisiana, and nothing about what was the difference of pressure to which she was exposed at different times of the day. As to the size of the cables needed in mooring steamers there are various sizes, and what size should be used depends on the age of the cable and the number of
34 turns used. The usual size is from seven to eight inches for such a steamer.

To the 16th interrogatory he saith, the said steamer should have been moored with bow-ropes and steer-ropes or fasts, also spring fasts. In case she parted her stern cables the pressure upon her bow cables would have been greater.

To the 17th interrogatory he saith, I was not there, but it must have been owing to the strength of the wind and tide and the fasts not being sufficiently strong.

To the 18th interrogatory he saith, I had no conversations with any of the officers of said Louisiana.

To the 19th interrogatory he saith, I should say that additional fastening should have been put on as the wind increased. As to the tide, the wind being from the east when the tide changes from ebb to flood, the strain on the fasts would have been much increased, and hence additional fasts should have been got out.

To the 20th interrogatory he saith, I have already answered that question.

To the 21st interrogatory he saith, it depends entirely upon the strength of the wind, and the scope of chain it would take to bring the vessel up.

To the general questions he saith, I know nothing.

35 No cross-interrogatories.

GEO. WM. HOWE.

Examined, taken, reduced to writing, and by the witness subscribed and sworn to this 17th February, 1863, before

R. E. STILWELL, *U. S. Court.*

Ira G. Rogers, being duly and publicly sworn, pursuant to the directions hereunto annexed, and examined on the part of the libellants, doth depose as follows:

To the first interrogatory he saith, my name is Ira G. Rogers; my occupation is submarine diver; I was employed in New York to go and assist in raising the steamer Flushing after she had been sunk on Hampton bar; I don't know her owners, her age, or tonnage.

To the 2d interrogatory he saith, I was not master of said steamer in 1862; she was in the service of the government as a transport in the spring of 1862.

To the 3d interrogatory he saith, when I arrived at Hampton
36 Roads the Flushing had been sunk some time; her bow deck was partly under water and her stern out of water; she was raised on the 8th of August and afterwards taken to Norfolk; there were four vessels employed in raising her with spars and chains; the wind and weather during the time of raising her was unfavorable, which retarded operations; sometimes we could not work for a week at a time; every effort was put forth to raise her that could be.

To the 4th interrogatory he saith, I am acquainted with the hailings of Hampton Roads and all the localities mentioned in the interrogatory; Hampton bar, where the Flushing sunk, is not within the channel, but outside of it; formerly there was a buoy on the bar to indicate the point of the bar and to warn vessels off; Hampton bar lays about west-northwest from the new wharf; I should think that the two wharfs lay about east and west from each other, the new wharf being to the west. The anchoring places of large vessels is between the points southeast and southwest of the old wharf. The distance from the old to the new wharf is about a quarter of a mile, and about the same distance from the new wharf to where the Flushing lay.

37 To the 5th interrogatory he saith, I know of a collision (having been a witness to the same) between the Louisiana and the Flushing, which occurred on the 8th of June, 1862, between the hours of 2 and 4 in the afternoon. I don't know who the master of the Louisiana ; when the collision occurred I was on the schooner Curtin, which lay on the starboard side of the Flushing; I saw the Louisiana for the first time after she broke away when she was about half-way between the two wharves; she was then drifting broadside towards the Flushing, with her bow towards the northward; she continued to drift with the strong flood tide and easterly wind until she came in contact with the Flushing; she struck the Flushing on the stern, broke her fan-tail and a number of her deck beams, knees to the guards on the outside, and the principal part of her saloon and her hurricane deck. This, I think, was the main part of her damage. I can't speak of the damage in money.

To the 6th interrogatory he saith, the Louisiana called for assistance after the collision; the steamboat Atlantic came to her assistance and succeeded in getting her off; she went out into the roads and came to anchor in the place I have described, as the usual place of anchoring, and remained there at anchor three or four hours; and, I believe, steamed away from her anchorage herself.

To the 7th interrogatory he saith, at the time of the collision the
38 wind blowing strong northeast and flood tide running strong. The wind in the morning was blowing from the same quarter, but not so strong; the tide was ebb. After the Louisiana got to anchor the wind continued, but not so strong, and the tide slacked. The tide continued at the same rate as at the time of the collision for about two hours after the collision and while the Louisiana was at anchor.

To the 8th interrogatory he saith, I saw the Louisiana while she was moored at the old wharf on the day mentioned. I don't know when she arrived. I did not see her part her moorings; and, as I have above stated, first saw her when she was between the two wharves. If I remember right, I think there was a large fleet laying in the roads at anchor on this day—both steamers and sailing vessels. The chief part lay four or five miles from Fort Monroe, up towards Newport News. There was no steamer or

sailing vessel in the path that the Louisiana took towards the Flushing. There was no shipping within a quarter or half a mile in each direction from the old wharf at the time the Louisiana was drifting, as above spoken of. There was plenty of sea-room on each side of her on the north or south, after she broke away, after I saw her between the two wharves, to have enabled her to have steered clear of the Flushing, and all other vessels, if she had been properly handled.

39 To the 9th interrogatory he saith, I think there were some tug-boats moored at the new wharf at about the time the Louisiana broke away. So far as I know, there was no other accident among the steamers or shipping in the harbor on this day.

To the 10th interrogatory he saith, I did not see the anchors and chains, and, therefore, cannot speak of them.

To the 11th interrogative he saith, I cannot speak of the chain or anchor of the Louisiana, referred to. In my judgment, a steamer of 1,000 tons should have her large 2,000 pounds in weight, and her smaller one 1,200.

To the 12th interrogatory he saith, she should have let go her starboard anchor—that is to say, her weather anchor—as soon as she broke adrift; and I think said anchor would have brought her up before she struck the Flushing, if it had been let down in season. Both of her anchors should have been thrown out if the starboard one failed to hold her. The starboard, or weather anchor, should have been thrown out, because she would not have drifted over it and fouled it with the chain. I think the effect of throwing out the starboard anchor, which was the larger anchor, would have been to have brought her head to the wind. The Louisiana could have been brought, without difficulty, to anchor before she struck the Flushing, on the day mentioned.

40 To the 13th interrogatory he saith, one hundred yards would have been sufficient space to have rounded her to by the use of her anchors. If the Louisiana had had sufficient steam to have worked her engines, at the will of her commander, she could have got control of her course in a space three times her length by the use of her engines.

To the 14th interrogatory he saith, I should say she was *she was* some 20 minutes or half an hour. The Louisiana could have been brought up by the use of her anchors before she struck the Flushing.

To the 15th interrogatory he saith, I should say the difference in the strain was as much again owing to the strength of the flood tide, combined with the increased wind. Additional fastenings should have been got out to provide for the additional strain. The Louisiana should have had out, on this occasion, from seven to nine-inch hawsers. Between ten and twelve-inch hawsers are used for mooring.

To the 16th interrogatory he saith, she should have been moored forward and aft with double bites and spring line. There would be more than twice as much pressure on the bow cables after the stern cables parted.

To the 17th interrogatory he saith, to the wind and sea and want of sufficient fasts.

41 To the 18th interrogatory he saith, I had no conversation with them.

To the 19th interrogatory he saith, in the supposed case I think additional fastenings should have been got out.

To the 20th interrogatory he saith, I have already answered.

To the 21st interrogatory he saith, I have already answered.

Q. 22d. What opinion, if any, did you form as to the management of the steamer Louisiana just prior to said collision? And state your reasons for said opinion.

A. I don't think they had proper steam on the boat to work her, because

they could have worked the vessel if they had had sufficient steam so as to have cleared the Flushing by going either side of her. There was room enough either between the shore and the Flushing, or to the southward of the Flushing.

To the general question he saith, with reference to my profession and occupation, that though now following the business of a submarine diver, previous to that I have been master and mate of sea-going vessels and steamers. My experience in that line extends some 13 years.

No cross-examination.

IRA G. RODGER.

Examination taken and reduced to writing, and by the witness subscribed and sworn to, this 17 day of Feb'ry, 1863, before

R. E. STILWELL,
*U. S. Court.*

42 John H. Dawson, being duly and publicly sworn pursuant to the directions hereto annexed, and examined on the part of the libellant, doth depose and say as follows, to wit:

To the 1st interrogatory he saith, my name is John H. Dawson; my age is about 42 years; my occupation, engineer; I have been so about 25 years; I was engineer of the Flushing in 1862; the Flushing belongs to a steam ferry company, the exact name I do not know; don't know when she was built or what her tonnage is.

To the 2d interrogatory he saith, the Flushing was engaged as a government transport in March, 1862; don't know as to the rate. On the 28th March, 1862, the Flushing got aground on Hampton bar. There had been a buoy on the bar, which had been taken away; this was the reason, I suppose, of going on to the bar.

43 To the 3d interrogatory: When first aground there was not at high water more than two feet and a half on her bow, and from amidships, aft, she was entirely above water. She was raised in August. Wreckers were employed to raise her. I stayed at Fort Monroe while she was being raised, and those employed were working whenever the weather permitted.

To the 4th interrogatory he saith, I am not acquainted with the anchorages outside the harbor, but know the position of Hampton bar and each of the wharves. I should judge that the distance from the old wharf to the new wharf was the same as that from the new wharf to the Flushing, which was about a quarter of a mile.

To the 5th interrogatory he saith, I saw the collision between said steamers Flushing and Louisiana on the 8th of June, 1862, which I should judge was between 2 and 4 o'clock. At that time I was on a barge abreast of her, some 300 yards from her. I first saw the Louisiana a short time before she got abreast of the new wharf; she was drifting head to northward, sideways with the wind and tide, which was from the northeast, and flood tide. After the Louisiana got by the new wharf she let go her small anchor on the port bow. The chains fetched up around her stern in a short
44 bite and parted. There was just room enough, if it had held, to have swung her clear of the Flushing. I should judge the Louisiana was afoul of the Flushing from a half to three quarters of an hour. She struck her on the guard aft, or fan-tail, and tore it up, broke off the deck beams and the bigger part of her main saloon, promenade and hurricane deck aft the wheel, and also bent some of the arms of the paddle-wheels so that they had to be taken out. I don't know the cost of repairs.

To the 6th interrogatory he saith, the Louisiana, on the occasion of the

collision, could not get off herself, but called for assistance and was towed out. Whither she anchored, and how long she stayed, I cannot say.

To the 7th interrogative he saith, on the day of collision the wind was northeast and blowing a pretty taut breeze—a full sailing breeze—not a gale; not so but the Louisiana could have laid at her wharf if she had been properly made fast. I don't remember what the weather was in the morning compared with that of the noon, as I did not notice.

To the 8th interrogative he saith, I saw the Louisiana in the forenoon while she lay moored at the old wharf. Can't say when she came there. I did not see her part her mooring; and, as I have before stated, first
45 saw her between the old and new wharf. There was a considerable shipping in the roads on that day, but they were a good way off from the Flushing and the wharves. There was a good anchoring ground north and south of the Flushing and to the eastward of her. There was no vessels or steamers between the Flushing and the old wharf, nor within a half a mile of the Flushing, or within a half a mile of the Louisiana, while she was drifting. The nearest vessel to the southward of the old wharf was about a good half mile. If the course of the Louisiana had not been arrested by the Flushing, or shoal water, she would have gone on three miles without coming in contact with any vessel. There was sea-room enough for the Louisiana, after she broke away, to have steered clear of the Flushing if she had been properly handled and there had been sufficient steam to have controlled her motion. In the position she was drifting, within at any time before she got within 30 yards of the Flushing, with a sufficient head of steam they could have backed her clear, or gone ahead clear, without coming in contact with any vessel.

To the 9th interrogative he saith, I do not know whether there was any other steamer moored at either of the wharves on that day. I neither heard of nor saw any other accident in the roads that day.

To the 10th interrogative he saith, I could not say as to the
46 anchors; but the chains of the anchor looked to me small for such a sized boat. I was struck with the smallness of the chains for such a sized boat.

To the 11th interrogatory he saith, in the way the Louisiana was drifting I think the chain was too small, and from the way and side which the anchor was thrown it brought up with a small bite. I am not able to speak of the exact weight, but should judge that they ought to have an anchor to weigh from 1,800 to 2,000 pounds for the large anchor, and the small anchor of from 12 to 1,500 pounds. The chains for the big anchor should be an inch and a quarter or three-eighths in diameter of link, and the small chain about an inch.

To the 12th interrogatory he saith, the starboard or windward anchor—that is, her large anchor—should have been let go as soon as she parted if they had not steam to handle her otherwise. Her large anchor would have been sufficient to have brought her up and kept her from doing any damage if she had been properly handled. If the large anchor did not bring her up the small anchor should have been let go.

To the 13th interrogatory he saith: Well, I should have thought the anchor would have brought her up twice or three times her length, sure. If
47 she had had sufficient head of steam when she left the wharf, she need not have gone more than three times her length from the wharf.

To the 14th interrogatory he saith, from the time I saw her she was about ten minutes coming from the point where I first saw her till she struck the Flushing. The rest of the question I have already answered.

To the 15th interrogatory he saith, I should judge there would be about a third more strain in consequence of the changing of the tide from ebb to

flood. I think, if the lines had not been sufficient to hold her, there ought to have been more got out. I should judge 8 or 9-inch cable should be used at such a time as that. I have known 10 or 11-inch cable to be used in mooring steamers.

To the 16th interrogatory he saith, the position she lay at the time, she should have had breast lines forward and aft, and a spring line from the north corner of the wharf to her forward gangway. The increased strain upon her bow cables, after her stern cables parted, that if the cables had not of broken she would have torn out her cleets and chocks, as she lay broadside to the wind and tide; there was nothing that could have saved from doing otherwise—that is, after her stern cables parted.

To the 17th interrogatory he saith, not being properly fastened.

48 To the 18th interrogatory he saith, I heard the captain of the Louisiana say, while she was afoul the Flushing, and when he came alongside in a small boat, *say* to the mate, in the forward gangway of the Louisiana, while he was in the small boat, *say*, "This is a damned pretty mess you have got into;" and he said, "Why in hell didn't you make the boat fast, as I told you, before I went away?" He cursed him a considerable, and said, "You act like a stupid set of fellows, all of you." I did not hear any reply. The captain then got aboard of the Louisiana.

To the 19th interrogatory he saith, I have already answered.

To the 20th interrogatory he saith, I have already answered.

To the 21st interrogatory he saith, I have already answered.

To the general question he saith, I don't think the Louisiana was damaged when she first struck the Flushing; but when they began to work the engine ahead, on the Flushing, their wheel came in contact with her, and they stopped her.

No cross-examination.

JOHN H. DAWSON.

Examination taken and reduced to writing, and by the witness subscribed and sworn to, this 17th day of Feb'ry, 1863, before

R. E. STILWELL,
*U. S. Court.*

Adjourned to 10 a. m., the 18th inst.

49 WEDNESDAY, *Feb'ry 18th*, 1863.

Thomas Britt, being duly and publicly sworn, pursuant to the directions hereto annexed, and examined on the part of the libellants, doth depose and say as follows, to wit:

To the first interrogatory he saith, I am a seaman by occupation; I was employed to assist in raising the Flushing after she had been sunk on Hampton bar; I don't know to whom the Flushing belongs, nor her age, or her tonnage.

To the 2d interrogatory he saith, I was not master of the Flushing; neither do I know anything of the other matters in the interrogatory.

To the 3d interrogatory he saith, after the Flushing was sunk her bow was beneath water and her stern above; I was not there when she was raised, and don't know, therefore, when she was raised. She was raised by means of hydraulic power; every means was used to raise her while I was there. We had considerable bad weather, and some fine weather, and some weather we could not work.

To the 4th interrogatory he saith, I was engaged in assisting at raising the vessel some three months, and had occasion to notice the position of the wharves, and Hampton bar, and the usual anchoring places of vessels. I could not tell the exact distance from the old to the new wharf; as

50 near as I could tell, I should say it was a quarter of a mile from the new wharf to where the Flushing lay.

To the 5th interrogatory he saith, I saw the collision spoken of between the Flushing and the Louisiana; I don't recollect the month or day; can't remember the time of the day; I was on board the schooner Curtin, which was lying on the side of the Flushing. I first saw the Louisiana when she was about half way between the new wharf and the Flushing; I saw the Louisiana strike the Flushing. She carried away a great part of the upper and lower saloon, cut her rudder, carried away a great deal of her guard, broke her stanchions and deck beams. That was the principal damage. The knees were started. I don't know what the extent in money would be the damage.

To the 6th interrogatory he saith, I don't recollect at this time what became of the Louisiana; I saw her leave the Flushing; she was taken away by a steamboat.

To the 7th interrogatory. The wind was northeast and very high; flood tide; there was a rough breeze; the wind was about the same all day, as near as I can recollect.

To the 8th interrogatory he saith, I did not see the Louisiana, or
51 notice, as far as I can recollect, until the time I have spoken of as above. When I saw her she was coming quarterly, partly bow to, not quite a broadside, towards the Flushing. She was drifting and trying to work steam, judging from the engines; I saw she seemed not to have sufficient steam to work her. As nearly as I recollect, th re were not more vessels in the roads that day than usual for the weather. There were no vessels between the old wharf and the Flushing at the time of the collision; vessels don't anchor there unless it is to save themselves from a collision or going on to the bar. Can't recollect the distance the nearest vessel was from the old wharf. If they had let go her last bower anchor in time, after she broke away, she could have been brought up.

To the 9th interrogatory he saith, there was steamers moored at the new wharf at the time of collision; no other steamers or vessels broke away on this day as far as I recollect, nor any accident.

To the 10th interrogatory he saith, did not notice the chains or anchors of the Louisiana.

To the 11th interrogatory he saith, I do not know, as I did not notice the said anchor and chain. As near as I can judge, the large anchor on a steamer of that size should be 1,800 pounds, on a small anchor, 1,500 pounds.

To the 12th interrogatory he saith, I do not know in what position she was moored to the dock; if she was heading to the westward she
52 should have backed water, with her helm to starboard, and let go her starboard, that was her weather, anchor. I am pretty sure that if she had let go her starboard anchor it would have brought her head to the wind and would have arrested her course. I think her starboard should have been thrown out, because it was her weather anchor, and let out of her bow clear of the steamer, as it would not have sawed across her stern. By letting go her lee anchor it would have been likely to have led across her stern and broken her chain; even if it did not break her chain, it would not have the same tendency to bring her head to the wind as the other

To the 13th interrogatory he saith, I think the anchor would have brought her up in over twice her length. If the Louisiana had had sufficient steam on, a space three times her length from the old wharf would have enabled her to get control of her course.

To the 14th interrogatory he saith, I don't know how long the Louisiana was drifting to the Flushing. As to the use of the anchors, I have answered that question.

To the 15th interrogatory he saith, I don't know as to when the tide changed, but the flood tide would make a greater strain than the ebb. I should think the officers on board should have used precaution
53 against the tide and wind. I don't know what moorings are required to hold steamers to the wharf. The strength of moorings vary with the position of the vessel lying at the wharf. If there is an apprehension of the possibility of a greater pressure they should get out greater lines.

To the 16th interrogatory he saith, supposing she was lying at the end of the wharf with her head to the westward, she had ought to have had an eight-inch cable to the western side of the wharf. This is what they call a spring line; there should have been a similar spring line from the bow to the eastern side of the wharf. They should have sufficient breast lines to hold her put out from her stern, and her bow to the wharf.

To the 17th interrogatory he saith, the weather was nothing extra; it was blowing hard, but it was not impossible to hold her with sufficient fastenings. I cannot say positively what was the reason of her breaking away, but suppose it was in not having sufficient fastenings.

To the 18th interrogatory he saith, there was a man came alongside of the Louisiana, while she was afoul of the Flushing, in a small boat. I took him to be the commander of the Louisiana by his expressions. I heard him address some one on the Louisiana. I couldn't see the man he spoke to. I cannot recollect all that he said, but he said "You have got into a
54 pretty mess; nothing but damned neglect to let her get adrift; you can't be trusted." As near as I recollect, this was the substance of what he said. My attention was drawn off to the state of the vessels. When I heard him make this remark I supposed him to be the commander.

To the 19th interrogatory he saith, this interrogatory has been answered.

To the 20th interrogatory he saith, I have answered this interrogatory.

To the general interrogatory he saith, there was room enough to have worked the Louisiana and kept her clear of the collision. She could have gone southward of the bar, or steamed in the inlet and between the Flushing and the new wharf. There were no vessels in the channel between the new wharf and the Flushing. There were vessels outside, to the southward, but none to prevent her coming to an anchor.

No cross-examination.

THOMAS R. BRITT.

Examination taken, reduced to writing, and by witness subscribed to and sworn to this 18th day Feb'ry, 1863, before

R. E. STILWELL, *U. S. Court.*

55 Daniel R. Lippincott, being duly and publicly sworn, pursuant to the directions hereto annexed, doth depose and say as follows, to wit:

To the 1st interrogatory he saith, Daniel R. Lippincott is my name. I am a mariner by profession and a coasting captain. I was employed, in the month of April, 1862, to assist in raising the steamer Flushing, after she had been sunk on Hampton bar. I don't know her owners, age, or tonnage.

To the 2d interrogatory he saith, I was not master of the Flushing, and do not know in what service she was employed; she was sunk on the 28th of March, as I understand.

To the 3d interrogatory he saith, when I first saw her her bow was under water and her stern above. She was raised on the 8th of August. From the time I went there every effort that was practicable was made to raise her. I stayed until she was raised. During the time she was being raised there was considerable bad weather, which interfered with our operation.

To the 4th interrogatory he saith, I am pretty well acquainted with the harbor of Hampton Roads and its anchoring places and channels, and I know the position of the wharves and Hampton bar and the Rip Raps; Hampton bar is not in the channel and vessels cannot pass over it.

56 I should think it was not more than a quarter of a mile—say about a quarter of a mile—from the new wharf to the Flushing. It might be a little more than that from the old wharf to the new. The usual anchoring places are from a quarter to a half a mile from the old wharf.

To the 5th interrogatory he saith, I saw the collision of the Louisiana and the Flushing, in the month of June, 1862; I think it was on the 8th, and not far from 3 o'clock. I don't know any of the officers of the Louisiana. I lay, at the time, on a schooner at anchor some 50 or a 100 yards southwest from the Flushing at time. I saw the Louisiana strike the Flushing. The damage done the Flushing by the collision was the carrying away of her fan-tail, some of her stanchions, after saloon, and the deck, and the hurricane deck was broken away so that it fell down. Some of the knees were broken.

To the 6th interrogatory he saith, the Louisiana, after the collision, was towed away to an anchor in the roads. I think she went away that evening from her anchorage.

To the 7th interrogatory he saith, at the time the wind was strong and remained so all day long. There was considerable roll of the sea. I would not call it a gale. It was a stiff breeze of wind—a little more than

57 ordinary. I think the wind commenced blowing before eleven o'clock; I know it commenced before. It was flood tide at time of collision. It had been ebb tide in the morning.

To the 8th interrogatory he saith, I saw the Louisiana while she was moored at the old wharf. I did not notice the Louisiana when she parted her moorings, nor until she got abreast of the new wharf. Her course from the old wharf towards the Flushing was westerly; she was drifting when I saw her, broadside with the tide, bow to the northward. I did not think she was at all under the control of her steam power. Her engines worked very slow, and did not work much at that. In my opinion she had not sufficient steam to work her engines. She followed the tide and wind and went as they drove her. They appeared to have no control of her whatever. There were not more vessels or steamers than usual in the roads such weather. Those that were there were at their usual anchoring places, south to southwest, from the docks—from a quarter to a half mile off. There were no vessels or steamers between the old wharf and the Flushing, except those moored at the new wharf. The nearest vessels or steamers was a quarter or half a mile from the old or new wharf—none nearer than a half a mile from the old wharf at the time the Louisiana was drifting. There was sea-room enough, so far as my experience goes, to enabled the Louisiana, after she broke away, to have navigated clear of the

58 Flushing. She could have gone to the northward, which would have taken her between the Flushing and new wharf, and could have dropped her anchor and come around head to, and gone out in safety. If she had gone to the southward she could have gone out into the roads, where, in fact, she did go after the collision.

To the 9th interrogatory he saith, there were some shipping moored at the new wharf; none at the old, as I remember. There was no other accident among the shipping that I saw or heard of.

To the 10th interrogatory he saith, I did not see the anchors or chains.

To the 11th interrogatory he saith, I should say that she should have from 1,600 to 1,800 pound anchor for her best bower anchor, and from 10 to 1,200 for the other. For the best bower an inch and a half chain, and an inch chain for the smaller.

To the 12th interrogatory he saith, if she was lying with her head to the westward at the wharf, and her stern broke away first, then her starboard anchor should have been let go first; her starboard anchor would have led all chain off her bow, while her port anchor would have drawn its chain under the vessel's bow, and the consequence would have been that it would have broken it off. Her starboard anchor would have brought her
59 head to the tide and arrested her course before the collision, if it had been let go in time. There was room enough even between the new wharf and the Flushing to have swung her clear of the Flushing, if her anchor had been thrown out abreast of the new wharf.

To the 13th interrogatory he saith, the length of the boat and 15 fathoms chain would have been sufficient to have brought her to anchor. I should suppose that a quarter of a mile would be enough to get control of her course, with the use of steam. There were no vessels to obstruct her in getting control of her course.

To the 14th interrogatory he saith, I think the Louisiana was from 15 to 20 minutes in drifting from the new wharf to the Flushing. The rest of the question I have already answered.

To the 15th interrogatory he saith, there was quite a third more strain, owing to the change of tide; additional precaution should have been taken to provide against this additional strain. From 6 to 9 inch hawsers are usually used on steamers of that size for mooring purposes, but there are larger ones manufactured.

To the 16th interrogatory he saith, I think she should have spring lines from bow and stern to the wharf, and breast lines from her bow and stern to the wharf.

To the 17th interrogatory he saith, wind and tide and not having
60 sufficient fastenings; the day required a little more than the usual fastenings on her.

To the 18th interrogatory he saith, I had no conversation with any of the officers, and heard none.

To the 19th interrogatory he saith, I have already answered.

To the 20th interrogatory he saith, I have already answered.

To the 21st interrogatory he saith, I have already answered.

To the general question, he knows nothing further.

No cross-examination.

D. R. LIPPINCOTT.

Examination taken and reduced to writing, and by witness subscribed and sworn to, this 18th of Feb'y, 1863, before

R. E. STILWELL, *U. S. Court.*

61 Samuel Curtis, being duly and publicly sworn, pursuant to the directions hereto annexed, and examined on the part of the libellants, doth depose and say as follows, to wit:

To the interrogatory for mechanics he saith, my occupation is that of a ship carpenter. I am 39 years of age, and have been at the business for 23 years. I live in Brooklyn, eastern district. I have repaired the steamboat Flushing since August, 1862, since she came from Hampton Roads. I put on new deck aft her wheel-beam and deck-beams, braces and knees attached to the hull, new rails and stanchions all the way round from forward to aft. I gave her chocks and cleets and a spring bearing and an A frame to hold up the wheel-beam, and caulking the deck. The whole cost of the above, by contract, amounted to the sum of $3,000. There were other estimates put in for repairing her, and mine was the lowest. I was acquainted with the Flushing before March, 1862, having done work upon her. I should judge

she was about two years old in March, 1862. When she was brought to me for repairs, all her deck work aft of the wheel-beams, including the saloon, was gone. Her larboard wheel-house was gone, her forward guards, her pilot-house, and all her joiners' work on the port side was gone. I don't know how these injuries were occasioned, except by hearsay. The $3,000
was a fair market value for the work. When I first saw her, after
62 she got back, she was lying at Flushing; it was in September, 1862;
and from the examination at that time I made my estimate. The cost of restoring the main deck of the Flushing around the stern, and up to half way between the stern and wheel-beam, was $1,000. This includes the starboard guards, together with the knees, guard braces, and deck-beams, in that part. There were 15 beams in that part besides the fan-tail beams.

*Cross-interrogatory.*

To the cross-interrogatory he saith, I have already specified the work that was done in my answer to the interrogatory in chief. I used white pine and white-oak timber and lumber, as specified in the contract. In the repairs, which I have spoken of as being made by me on the Flushing, I put white pine where there was white pine before, and put oak where there was yellow pine before, for the reason that no yellow pine was to be had. Her rail stanchions, plank sheers, facings, and the lining under the guard were of yellow pine before, and of which I put oak. This was all the oak substitutes. The contract speaks of old material to be used, if possible; but there was none fit to be used, and none used.

SAMUEL CURTIS.

Examination taken and reduced to writing, and by the witness subscribed and sworn to, this 18th day of Feb'y, 1863, before

R. E. STILWELL, *U. S. Court.*

63 Joshua Youngs, being duly and publicly sworn, pursuant to the directions hereto annexed, and examined on part of the libellants, doth depose and say as follows, to wit:

To the question for mechanics: I am a ship and steamboat joiner, and have been so for 18 years. I reside in New York; am now repairing the steamer Flushing, so far as her joiners' work is concerned. The repairs are in an advanced state. I have put in all the joiners' work below the main deck in the forward end forecastle and state-room, after end sitting-room or cabin, laying the floor, and ceiling the sides of the vessel, and repairing overhead work. The private stairs is new, leading from main deck to after cabin below. This is all that was done below the main deck, commencing in the main deck aft—that is, the ladies' or after saloon, wash-room, and water-closet; everything in and for this saloon is new, with the exception of six doors. That was, of course, new, because everything was gone from this part of the vessel. I have repaired the whole of the joiners' work on the main deck forward of the ladies' saloon. All the hurricane deck aft the wheels is new, because there was none of it there when I saw the boat. Both hurricane and promenade decks were recanvassed, and all the joiners' work on the promenade deck, forward and abreast of the wheels, was repaired. The whole of the work done by me, as above described, cost
$3,300, which is, if anything, less than its worth. Of the above entire
64 work, the cost of what I have above described as having been done
by me on the ladies' or aft saloon, together with the hurricane deck, saloon fixtures from the extreme end of the stern up to the after part of the wheel, is $1,500. I saw the Flushing immediately on her arrival from Fort

Monroe, and what I have described as the injuries she received had then been done to her.

*Cross-examination.*

To the cross-interrogatory he saith, I have already stated particularly the repairs. The lumber used by me was the same material as used before. I done the joiners' work on her when she was built, and the work I have done and am doing is a duplicate of it in the material used. I don't know how the injuries on the Flushing were occasioned.

JOSHUA YOUNGS.

Examination taken and reduced to writing, and by the witness subscribed and sworn to, this 18th day Feb'y, 1863, before

R. E. STILWELL, *C. S. Court.*

65 W. H. Nimmo, being duly and publicly sworn, pursuant to the directions hereto annexed, and examined on the part of the libellant, doth depose and say as follows, to wit:

To the 1st interrogatory he saith, I am the captain of the steamboat Flushing, and am a steamboat captain; I was her captain in 1862; she belongs to the Flushing College Point and New York Steam Ferry Company; she was built in 1859 or 1860; her tonnage was 333 tons; she was used as a river boat between Flushing and New York.

To the 2d interrogatory he saith, I was, and in the employ of the U. States government at $350 per day. On the 28th of March, 1862, she was sunk on the point at Hampton bar through the absence of the usual buoy to mark the point of the bar. Her value was $40,000.

To the 3d interrogatory he saith, after the Flushing got aground she was about one-half under water; that is to say, her main deck was just under water. She was raised on the 8th of August by wrecking masters employed by the owners, and carried to New York by me. The wrecking masters employed by the owners used every effort to raise her, but, owing to the unusual prevalence of easterly weather, at which time they could not work, it was impossible to raise her before the 8th of August. I remained there until she was raised. I took steps next day, after she got aground,

66 to make preparations in the way of employing proper persons to have her raised. It was the interest of the owners to have her raised as soon as possible.

To the 4th interrogatory he saith, I am acquainted with the harbor and its various localities, including the channels, Hampton bar, anchorage places, wharves. The distance from the new wharf to the old is about 400 yards, and from the new wharf to the Flushing about the same distance. The usual anchoring places for vessels was from the beach in a right-angle from the beach and a quarter to a half a mile from the beach. The course from the old wharf to the new wharf is westerly, and from the new wharf to the Flushing is also westerly.

To the 5th interrogatory he saith, she came into collision with the Flushing on the 8th of June, at between 2 and 4 o'clock; Captain Porter was master of the Louisiana at the time. At the time of the collision I was on shore, about a half a mile off; I reached the vicinity of the Flushing about ten minutes after the collision; the Louisiana was still afoul the Flushing; I should judge she was afoul about 20 minutes. The damages to the main deck comprises the breaking of the guard around the stern, and also

67 the starboard quarter, about half the distance from the stern to the wheels, the breaking of the knees under the deck beams, guard braces, and the deck beams themselves, together with the rails and stanchions. What I have above described is called ship carpenters' work. The

damage done the joiners' work consisted of breaking away the entire after or ladies' saloon, together with the hurricane deck from the extreme stern to the after part of the wheels. This work was so badly damaged by the collision that it could not be used in the repairs of the boat. A portion of it was knocked overboard by the Louisiana, and the balance of it—a portion of it—was blown away by the wind. I went on board the Flushing as soon as the Louisiana was removed, and found the damages as I have described. To the best of my judgment, the damages done as above described was $2,500; and this estimate was made by me at the time of the injury.

To the 6th interrogatory he saith, she was first towed away by a tug-boat, and afterwards by her own steam power. She came to anchor near the Rip Raps, where she lay until 9 o'clock that evening, and came to the Baltimore wharf for the purpose of taking on wounded soldiers. The wind and tide were the same when the tug-boat towed her away as it was at the time of collision. The tug-boat moved her easily, and against wind and tide.

68 To the 7th interrogatory he saith, during the morning it was quite mild, with a light breeze from the eastward; it continued so until a flood tide made, when the wind sprung up, blowing up a half a gale; and that was the condition of the same at the time of the collision. The tide changed to a flood at about 1 o'clock. The weather continued throughout the remainder of the day about the same.

To the 8th interrogatory he saith, I saw her lying at the old wharf at about half past 12 o'clock. I did not see her part her moorings, and had no opportunity to examine her mooring, and did not see her until after she had come into collision with the Flushing. There were quite a number of vessels lying at anchor in the roads at the time of the collision, from a quarter to half a mile from the wharf; none nearer than a quarter of a mile; there were none between the old wharf and the Flushing. There was sea-room enough to have managed the Louisiana, after parting her moorings, had she have had sufficient steam on to control her; and to kept her clear of the Flushing and all other vessels lying in the roads, she could have backed directly off from the old wharf and anchored, or have drifted throughout the whole length of the roads without the least risk of coming in contact with other vessels; or could have worked inside of Hampton bar, at the usual anchoring place.

69

To the 9th interrogatory he saith, there were 3 or 4 vessels lying at the new wharf; none of them broke away; and no other accident occurred that day, that I heard of.

To the 10th interrogatory he saith, I did not see either anchor or chain.

To the 11th interrogatory he saith, for the largest anchor of a steamer of a 1,000 tons it should be about 2,000 pounds, and for the light anchor from 12 to 1,000 pounds. The chains for the largest anchor should be 1¼ inch diameter of links, and for the small anchor one-inch chain.

To the 12th interrogatory he saith, they should have let go her anchors immediately after parting her moorings from the wharf. Her starboard or weather anchor should have been let go first, and the port anchor immediately after if the large one had not have held. The large anchor would have held her if it had been let go at any time between the old wharf and within 600 feet of the Flushing, from the fact that the large anchor did hold her for three hours, with full strength of wind and tide, in the middle of the roads, where the gale was more severe than from the old wharf to the Flushing. I saw no vessel dragging her anchor on that day.

70

It is always to let go the largest anchor first in stress of weather. The weather anchor would have been the proper anchor to have let go first, whether the vessel was drifting her larboard or starboard side to the weather, because the chains in that case would lead straight from the deck

of the vessel to the anchor without coming in contact with the bow of the vessel.

To the 13th interrogatory he saith, within a scope of twice her length—about six hundred feet.

To the 14th interrogatory he saith, I cannot say as to the length of time. If her anchors had been let go at proper time she could have been stopped before coming in contact with the Flushing.

To the 15th interrogatory he saith, I should say the difference consisted in the entire strength of the flood tide at their moorings. Extra fastenings should have been got out before the tide changed from ebb to flood. From two to nine cables are manufactured for mooring steamers of the class of the Louisiana: her lines should have been 8 or 9 inches for mooring.

To the 16th interrogatory he saith, the Louisiana should have been moored with breast lines from her bow, and from her stern to the dock; also
71 with spring lines from her bow and stern to each corner of the dock nearest the boat. In speaking of the lines I mean new strong lines, without any defects. Should a boat, in her position, have parted her stern fastening so as to swing broadside to the wind and tide, it would be impossible to hold her in that position even with extra lines to her bow, as her chocks and cleets would have been torn out or her lines parted

To the 17th interrogatory he saith, I attributed the breaking away of the Louisiana from her wharf to the defects in her moorings or fastenings. I have seen other steamboats about the same size lying at the old wharf until their guards were nearly broken off by the force of the sea and contact with the dock without parting her moorings. There was nothing extraordinary in the weather at the time—that is to say, there was nothing in the weather to make it dangerous to lay there with proper fastenings, but there was a reason for getting out more fastenings.

To the 18th interrogatory he saith, I had a conversation with Captain Porter, master of the Louisiana, at about 9 o'clock on the evening of the day of the collision. I went on board of the Louisiana at the new wharf, to call the attention of the captain to the damage done the Flushing. He said to me, Captain say nothing about it; I have seen the whole of the damages, and would rather have given 100 dollars out of my own pocket than had
72 it done. He said he charged his mate particularly when he left the boat, about 1 o'clock, to put out extra lines, to secure her to the dock, as the flood tide was then making; that he himself had left the boat in charge of the mate, and that the mate had not obeyed his orders by getting out the extra lines. I requested him to go off aboard the Flushing with me, that we might view the extent of the damages together He said it was quite unnecessary, as he had seen it all, and that the owners of the Louisiana would pay the damages without any trouble. He also said that the general outfit of the Louisiana was very poor; that they had no sufficient windlass in the boat, and that he had, in consequence, had to slip his anchor and chain a few minutes before, so as he could come from his anchorage to the wharf. He also said that his port windlass or capstan was too small, and also broken, and that he had made frequent applications for a new one.

To the 19th interrogatory he saith, I have already answered.

To the 20th interrogatory he saith, I have answered already.

To the 21st interrogatory he saith, I have already answered.

To the general question he saith, I know nothing.

W. H. D. NIMMO.

73 Examination taken and reduced to writing, and by the witness subscribed and sworn to, this 18th Feb'ry, 1863.

R. E. STILWELL, *U. S. Court.*

Adjourned to the 19th inst., at 10 a. m.

THURSDAY, *Feb'y* 19, 1863.

Charles Post, being duly and publicly sworn pursuant to the directions hereto annexed, and examined on the part of the libellants, doth depose and say as follows, to wit:

To the 1st interrogatory he saith, I am a steamboat captain, and have been so for some 18 months, and previous to that have been captain of sailing vessels for many years. I know nothing of the balance contained in the first interrogatory.

To the 2nd interrogatory he saith, I was not master of the Flushing, and know nothing of the matter contained in the balance of the interrogatory.

To the 3rd interrogatory he saith, I know nothing of what efforts were made to get the Fushing afloat, except I saw men at work on her.

74 To the 4th interrogatory he saith, I think I am acquainted with the harbor of Hampton Roads and its various localities, having frequented with my steamer some 4 or 5 months. I know the usual anchoring places of vessels. I know where the two wharves are.

To the 5th interrogatory he saith, I saw the collision of the Flushing and Louisiana in the fore part of June, 1862, I think, between 2 and 4 o'clock in the afternoon. Don't know the captain. At time of collision I was on the Baltimore or new wharf. I saw the Louisiana strike the Flushing. Did not closely examine the damage. I was on board before the accident, not afterwards.

To the 6th interrogatory he saith, I know the Louisiana was towed away after the collision, and believe she went to anchor.

To the 7th interrogatory he saith, at time of collision the wind was blowing fresh, perhaps what would be called half a gale. I went to Baltimore that afternoon in the mail boat very comfortably. The tide was flood at time of collision.

75 To the 8th interrogatory he saith, I don't recollect noticing the Louisiana previously on that day, but saw her at the wharf as she was swinging away; her stern lines parted first, then her bow lines. She came towards the Flushing nearly broadside, her head to the beach, and struck quarterly on the stern of the Flushing, which is a westerly course from her wharf. Her motion was more of a drift than anything else; but I saw her wheels move, and I thought it would be all right, as she could have backed or went ahead either, and cleared the Flushing by backing the vessel and letting her drift, which would have carried her out to Newport News, which would be the main channel to back, or she could have gone ahead between the Flushing and the docks where there is a channel leading towards Hampton, but afterwards the wheels slowed and stopped, as I think they did not have control of the steamer by steam power; that is, if the steam had been sufficient to have navigated the vessel she could have steamed clear of the Flushing and everything else. There was considerable number of vessels there at the time, but not so many as at other times, but there was none in the path the Louisiana took from the dock to the Flushing. I think the Flushing was the nearest vessel to the old wharf except those moored at the new dock. To the best of my judgment, the distance from the Flushing to the Louisiana wharf was a quarter of a mile or so. There

76 might have been some within a half a mile directly off from the old wharf. There was sufficient sea-room to have enabled the Louisiana to have kept clear of the Flushing or other vessels.

To the 9th interrogatory he saith, I saw no other accident or heard of any that day. There were vessels moored at the Baltimore dock.

To the 10th interrogatory he saith, I did not see the anchors or chains of the Louisiana.

To the 11th interrogatory he saith, I have not had much to do with steamers of that size. I should think, for large, 1,600 pounds, and small, 800, but don't know whether they would be large enough or not. My steamer is 450 tons, and my large anchor is 1,100 pounds; I can't speak as to the chains.

To the 12th interrogatory he saith, if I had resorted to anchors I should have thrown the weather anchor out first, and if that did not bring her up I would have thrown the other. I would have thrown the weather anchor, because it don't come in contact with the boat, and not as liable, therefore, to part her chains. If the steam in such cases had not been sufficient, I should have resorted to the anchors the moment she left the wharf, because the presence of Hampton bar would have caused danger to the Louisiana even if the Flushing had not been there. I would rather have struck the Flushing as far as my own vessel was concerned. There was nothing
77 in the weather at the time to have prevented the Louisiana from being brought up by her anchors if they had been used in time and had been suitable anchors. They should have had three anchors ready for use at a moment's notice. This is what is required in any steamer or vessel, and especially in that harbor. I was always in the habit of keeping my anchors so that we can take a handspike and throw them out a moment's notice.

To the 13th interrogatory he saith, as to the space required of in your question, I think 600 feet would have been sufficient to have brought her to anchor. I can't say what space would have been sufficient to have enabled the Louisiana to have got control of her course by the use of her steam. I think there was sufficient space, however, to have avoided a collision.

To the 14th interrogatory he saith, it was a short time. Can't tell the ex act time. The balance of the question I have already answered.

To the 15th interrogatory he saith, as the tide and wind were at the time of the breaking away she was, in my judgment, not moored in a proper position. The position might have been proper when the tide was ebb; the change of tide produced a greater pressure. On the change of the tide they should have got out more stern lines—that is to say, more stern lines were required after the change of the tide. The size of the cables
78 vary according to the size of the vessels. I should think the Louisiana ought have used 8 or 9-inch cables, and if they had had parts enough out they would have held the vessel. I speak of these being sufficient, provided they were perfect cables, and not chafed. I have seen other steamers, of same size, lay at same wharf until the guards would be chafed very much against the wharf and the lines did not part. I have seen them lay there on much worse days than that. I don't consider that the weather on that day was extreme. Nothing to prevent vessels going up Chesapeake bay on that day.

To the 16th interrogatory he saith, she should have been moored by 3 or 4 parts at each end. Much more mooring would have been required at the stern than at the bow, at the time she parted, owing to the wind and tide. After her stern lines parted, her breaking away was unavoidable; if the lines didn't part, the chocks and cleets would have gone, owing to the purchase the wind and tide would have.

To the 17th interrogatory he saith, I think the vessel must have been improperly moored, or the lines insufficient, or the vessel would have staid at the wharf.

79 To the 18th interrogatory he saith, I had none.

To the 19th interrogatory he saith, I have already answered.

To the 20th interrogatory he saith, I have already answered.

To the 21st interrogatory he saith, I have already answered.

To the general question he saith, prior to the collision I went on board

the Flushing several times, and also knew the Flushing when she was in New York, prior to her being chartered by the government, and had examined her particularly, inside of two years, with the view of purchasing. I believe the whole stern of the boat was all in good order prior to the collision and after her sinking. The stern includes the ladies' saloon, hurricane deck, and all aft the wheels. This part was not injured by or after the sinking, until the collision, being above water. I have never had any interest or connexion with or in the Flushing.

CHARLES POST.

Examination taken, reduced to writing, and by the witness subscribed and sworn to, this 19th day Feb'y, 1863, before

R. E. STILWELL, *U. S. Court.*

80 W. H. Nimmo, recalled this 19th Febr'y, 1863, deposed and says:

*Additional questions by Mr. Carter, counsel for libellants.*

Q. 1. State in what condition and plight the Flushing was on the day of the collision, and just prior to the same, and especially as to that part which you have above described as having been injured by the Louisiana.

A. The after part of the stern of the Flushing was out of the water the whole time she was sunk, up to the time of the collision, and her wood work on that portion was uninjured, with the exception of three panels of the weather or port side, which an extraordinary high tide had reached in one day. I suppose those panels would cost $5 apiece when new, and they were not destroyed, only damaged. The whole of the Flushing was in a good state of preservation before she was sunk, and in perfect order.

Q. 2. What is the usage and custom as to mooring a steamer with reference to the condition of the tide and wind?

A. The proper position for a boat to lay in, moored at a wharf, is, with her head to the wind and tide, or to either which has the greatest power, in case they are in opposite directions. In my opinion, the Louisiana should have been turned around, with her head to the wind and tide, for greater safety.

W. H. D. NIMMO.

81 Examination taken, and reduced to writing, and by the witness subscribed, the 19th Febr'y, 1863, before

R. E. STILWELL, *U. S. Court.*

THURSDAY, *Feb'ry 19th*, 1863.

John H. Dawson, recalled, doth depose and say as follows:

*Additional questions propounded by Mr. Carter, counsel for libellant.*

Q. 1. Did you notice the action of the engine of the Louisiana while she was drifting towards the Flushing? If so, state whether or not the said engine made any complete revolutions or passed the centre during said time.

A. I noticed the action of the engine of the Louisiana particularly. The engine worked nearly the stroke of the cylinder, what we call a half centre, but did not pass the centre until after she had been foul of the Flushing. They then worked her ahead until they began to damage themselves, when they stopped her, and couldn't get away themselves. It showed to my mind that hadn't steam enough to handle her or make her revolutions. In the position she was in, after she passed the new wharf, five revolutions

would have cleared her of the Flushing as well as of other vessels. There were no other vessels in the way.

JOHN H. DAWSON.

82 Examination taken, reduced to writing, and by the witness subscribed, this 19th Febr'y, 1863, before

R. E. STILWELL, *U. S. Court.*

WEDNESDAY, *Febr'y 25th*, 1863.

Richard Saunders, being duly and publicly sworn, pursuant to the directions hereto annexed, and examined on the part of the libellants, doth depose and say as follows:

Q. Have you been employed within the last two months, or since August, 1862? And if so, state by whom and where and what the painting of the same will cost, at the fair market value for said work and material. State, also, particularly, what the painting of each of the following portions will cost—that is to say: 1st. The ladies' or after cabin, aft of the wheels. 2d. The hurricane deck, aft of the wheels. 3d. The main from the ex-

83 treme stern up to a point half way from the stern to the wheels, including the rail and stanchions in that part.

A. I have been employed within the last two months, and previous to that also, in December, 1862, by Mr. Konig, treasurer of the board of directors of Flushing College Point and New York Steam Ferry Company, in painting the steamer Flushing. The painting, labor, and materials for painting the Flushing will cost, at the fair market value, $1,000. The ladies' or after cabin, aft of the wheels, which includes the whole of the cabin, with covering overhead, will cost $150. The hurricane deck, aft the wheels, including canvass coverings, stanchions, and seats, will cost $50. The main deck, from the extreme stern up to a point half way from the stern to the wheels, including the rail and stanchions in that part, will cost $20.

RICHARD SANDERS.

Examination taken, reduced to writing, and by the witness subscribed, the 25th Febr'y, 1863, before

R. E. STILWELL, *U. S. Court.*

84 *General description of joiners' work done by Messrs. J. & W. F. Youngs on the steamboat Flushing.*

Below the main deck, forward: Floor laid for forecastle and storeroom, forecastle fitted with berths and lockers for the crew, and storeroom fitted with shelves and lockers, ladder for forecastle and one for storeroom—cost..... $125 00

Below the main deck, aft: Floor laid for cabin or dining-room, sides of vessel covered with 2½-inch tongued and grooved stuff, panels and mouldings overhead of this cabin, one circular flight of stairs leading from main deck to this cabin, also one flight of straight stairs from ladies' saloon (on main deck) to cabin below—cost..... 200 00

Work on the main deck: Ladies' saloon, on main deck, aft, fitted with wash-room, water-closets, recess front, panelled all around, inside and outside, block cornices and angle mouldings. All the carlings and the deck for saloon were entirely new, as also the hurricane deck above promenade deck. The carlings, rail, stanchions, and ridge poles for hurricane deck abaft the wheel-houses were also new—cost..... 1,500 00

Sliding gangway, forward of saloon, promenade deck, nearly all new; all the rooms on main deck, forward of wheels, made new; most of the panel work new; new front and forward end of main deck, with sliding doors; all the panel work of the engine
85 encloser repair and made as good as new; one wheel-house entirely new, the other one repaired; walnut stairway from main deck to promenade deck made equal to new; new thwartship bulkheads at shaft; rooms on main deck fitted up as they were when built; water-wheel bulkheads put up new—cost. $900 00

Work on promenade deck: Hurricane deck, nearly all new; all the seats forward of wheel-house put up new; all rooms and other enclosures between hurricane deck and promenade deck put up new, including pilot-house and room abaft pilot-house, panel work around engine and stairway..... 500 00

Bulwarks and sidings, gangway ports made new, gang planks, chain box, gangway boards repaired and made as good as they were when the vessel was new..... 75 00

3,300 00

Messrs. J. & W. F. Youngs agreed with Messrs. Poppenhusen & Konig to do the above-described joiners' work for the sum of three thousand and three hundred dollars, ($3,300 00.)

Exhibit put in by Joshua Youngs.

R. E. STILWELL, *U. S. Court.*

86 *Specifications of work to be done to the steamer Flushing by Samuel Curtis and Z. Depeu.*

Curtis & Depeu hereby agree to repair the main deck of the steamer Flushing in a workmanlike and a substantial manner, to the satisfaction of all parties interested, for the sum of three thousand dollars—the work to consist of the following enumerated articles:

All defective deck beams to be replaced by new ones 3 by 6 inch, or the same as originally, and all new necessary deck planks to be put in 2½ by 4 inch, or the same as originally; also the decks to be sheathed as heretofore and of the same material. The entire deck to be entirely thoroughly caulked. The same number of knees and guards to be put in as originally, and to include all their iron fastenings. The plank shears and facings to be of oak. A new A frame to be put in on the port side, and a new spring bearing of the same dimensions and materials as originally. A new combing around the boiler hatch, and of the same material as originally. An entire new main rail and stanchions, to be of oak, fastened with iron rods. Also, 6 oak chocks, 4 oak cleets, and one locust cleet. It is understood so much of the old material as is sound and suitable is to be used in this repair.

SAMUEL CURTIS.
Z. DEPEU.

87 The above is a true copy of the contract spoken of in my evidence, and below will be found the particulars of the work done under that contract, and the prices:

The cost of the deck's work, from the extreme stern to the after part of the wheels, including caulking, is twenty-four hundred and forty dollars, ($2,440;) cost of rail and stanchions on that part, sixty dollars, ($60;) new

A frame and spring bearings, ($50) fifty dollars; cost of rail and stanchions, forward of the wheels, ($100,) one hundred dollars; cost of deck planks, forward of the wheels forward, including caulking, fifty dollars, ($50;) cost of deck beams, forward of wheels, seventy-five dollars, (75;) cost of boiler combings, twenty-five dollars, ($25;) cost of wearing pieces, plank shears, and facing forward of wheel, two hundred dollars, ($200.)

SAMUEL CURTIS.
Z. DEPEU.

Exhibit put in by Samuel Curtis.

R. E. STILWELL, *U. S. Court.*

91 THE UNITED STATES OF AMERICA, *District of Maryland, set:*

I, John Hanan, a commissioner appointed by the circuit court of the United States of the fourth circuit in and for the Maryland district, pursuant to the act Congress entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," do hereby certify that on the 28th and days of April, in the year of our Lord one thousand eight hundred and sixty-three, at my office in the city of Baltimore, within the district of Maryland, personally appeared before me William F. Porter, a witness for the appellee in a certain civil cause depending in the circuit court of the United States for the Maryland district, on an appeal from the United States district court of Maryland, wherein the Flushing College Point and New York Steam Ferry Company is appellant, and the steamer Louisiana is appellee. And the said witness being by me carefully examined and cautioned, and duly sworn according to law, to testify the whole truth, and being examined on behalf of the appellee, deposes and saith as follows:

Question. Had you any connection with the steamer Louisiana in the month of June, 1862? And if yea, what?

Answer. Yes, sir; I was captain and master of said steamer at that time, and had been so for some considerable time.

Question. In what service was said steamer employed at that time?

Answer. In the service of the government of the U. S., and used as a hospital boat.

Question. Where was said steamer on 8th of June, 1862?

Answer. She was then at Old Point.

92 Question. Whence had said steamer sailed on her last voyage before she arrived at Old Point, and when did she start on said voyage, and how laden, and when did she arrive at Old Point?

Answer. We came from the White House, at York river, and set out from there on Saturday morning, the 7th of June, laden with wounded and sick soldiers; we arrived at Old Point late on Saturday evening, and laid in the stream till Sunday morning, and about 11 o'clock on Sunday we were ordered to the old wharf to take in coal; we proceeded to said wharf and commenced taking in coal; we went thither by the order of the quartermaster of the United States. We also landed at said wharf about fifty of the sick soldiers—the worst cases. They were too sick to go outside to Philadelphia, which was the destination of the sick soldiers that were on board the steamer; and we took in from the hospital, at Old Point, about the same number we had landed. When I arrived at said wharf the ebb tide was setting out pretty strong. We laid the bows of our boat up against the tide about a west course; then we moored her with hawser lines sufficient to hold her; commenced taking in coal, and worked on her till about one o'clock, when she broke from her moorings. I was not there at the moment she broke from her moorings; I had gone round to see the

doctors, who were at the hotel, in relation to the sick that were on board of the steamer. When I left the vessel, at about half after twelve, she was sufficiently fastened, according to my judgment. I thought she would
93 remain there for any length of time.

Question. State, if you please, how she was fastened, with what number of lines, and the size of those lines?

Answer. At the stern part of the boat we had out four parts, and five parts out at the forward end; about seven of those parts were nine-inch new lines, and the other two lines measured seven and half inches. They were fastened to posts on shore which were driven into the ground and bolted to the wharf; the width of the wharf is about eighty feet, and we lay alongside of it.

Question. Is there another wharf at Old Point, and how is it usually designated?

Answer. There is another wharf, which is commonly called the Baltimore wharf.

Question. What is the width of this last-mentioned wharf?

Answer. About 220 feet; but I am not certain as to the width.

Question. What is the length of the steamer Louisiana?

Answer. Two hundred and seventy-five feet.

Question. Which of the two wharves, the one being 150 feet and upwards in width, and the other being 80 feet in width, would be the safest place at which to moor a vessel of the length of the Louisiana?

Answer. The widest would be the safest.

Question. Why, then, did you proceed to the old wharf instead of going to the new wharf?

Answer. We were ordered to the old wharf by the United States quartermaster.

Question. If you had been free to choose between said wharves
94 in selecting a berth for the Louisiana, which of them would you have chosen?

Answer. The big wharf, the one that had the most length.

Question. Whilst the Louisiana was in the service of the government, by whom was the coal furnished—by the government or by the owners of the steamer?

Answer. By the government.

Question. At which wharf had the government provided its supply of coal?

Answer. At the old wharf; they have their coal-yard there—about twenty yards from the end of the wharf.

Question. Had the government any supply of coal at the new wharf?

Answer. No, sir.

Question. Will you now state the condition of the weather at the time you left the old wharf at about half past 12 o'clock on Sunday, the 8th of June, 1862?

Answer. When I left the wharf the wind was blowing strong from the eastward from the Capes, the tide was about to turn, coming in with the wind from the sea; while I was away the wind and the tide came with such a pressure against the steamer, running about 4 knots an hour, and the wind freshening up with the tide, came in very strong in squalls from the ocean, and so, as I supposed, forced the steamer from her moorings; before I left the steamer I called my officers and I asked the engineer if he had sufficient steam
95 to work the boat. He said he had. The two mates conversed with me, and we were all of the opinion that she was sufficiently fastened. But I stated to the first mate, before I left the steamer to go to the hotel, that, if he thought it necessary, he could put out more fastenings if he chose, though we all thought she was sufficiently fastened. I was at the hotel

about an hour and a half; I had left them coaling the boat when I left it. I then walked down to the new wharf at my leisure, and I looked towards the old wharf, and not seeing her there, looked around, and saw her lying against the Flushing. Two tug-boats, attached to the Louisiana, were endeavoring to pull her away from the Flushing. I got into a small boat and went aboard the Louisiana, and when I went up into the gangway I remarked, now you have done it. I got on board on the upper deck, the tugs still pulling on her for about half an hour or so, before we could get her straight along, so as we could work her against wind and tide.

Question. When you got on board the Louisiana had you an opportunity for ascertaining whether there was any head of steam in the boiler or not?

Answer. Yes, sir; Mr. Henry, the engineer, said there was steam enough, but he could not move the wheel until the tug-boats pulled her from the Flushing.

Question. After the Louisiana was free of the Flushing did the engines work or not; and if they did, was there a sufficient force of steam for the efficient working of the boat?

Answer. Yes, sir; after I got her head round to the wind and tide I rung the bell and worked her out among the vessels anchored around the
96 wharves. I then proceeded over toward the Rip Raps, and got clear of the vessels in the harbor, and then dropped anchor.

Question. Did you examine the Louisiana, after you had returned on board, for the purpose of ascertaining whether she had parted from her moorings in consequence of the insufficiency of the ropes? And if you did make such examination, then state, if you please, what you found to be the condition of the capstan and the cleets through which the ropes had passed.

Answer. After I came to anchor I examined; I found some of my line parted in several pieces, and two of my cleets torn up from the deck, and the capstan, used for winding in lines, was torn out of the deck.

Question. As the result of this examination, are you able to state whether the ropes that had passed through the cleets and the ropes which were wound round the capstan, had given way or not? Had they parted, or were they entire?

Answer. They were all new lines. I know some of the ropes were parted, but as to those around the capstan and through the cleets I don't know. I only know the cleets and the capstan were torn out of the deck, and the lines may have parted on the shore; but I don't know, as I was not there at the time.

Question. Are you able to state whether, at any former period, the Louisiana had encountered a gale; and whether, if such were the case, the same ropes, or part of same ropes, had been used to fasten her; and whether they proved sufficient or not?

97 Answer. She had not laid for that length of time at that wharf at any former period in a gale. She had never before been caught there in a blow. If that wharf had been as wide as the length of the boat, we could have laid there with all ease, even in a gale. The steamer lay there at great disadvantage.

Question. Who were your mates?

Answer. Captain Cralle was my first mate and Mr. Evans my second mate. Captain Cralle is here, but Captain Evans is absent, in the service of the government on board one of the gunboats. He is now, I believe, a captain on board of one of those boats on the coast of North Carolina.

Question. Who was the engineer of the Louisiana at the time?

Answer. Mr. Horney; he is here.

Question. Had you a sufficient crew on board the Louisiana, and how many?

Answer. We had a sufficient crew; we had, in all, two mates, two engineers, two wheelmen, eight deck hands, and six firemen, besides a cook and three waiters.

Question. What was the character of the several persons, respectively, employed on board said steamer, in reference to their ability to discharge their several duties? Were they competent and reliable, or not?

Answer. As far as my judgment went, I found them reliable and competent.

Question. What was the character of the engine on board said boat?

Answer. I cannot say; the engineer will explain that better.

98 Question. If you had been on board of the Louisiana when she parted her moorings from the old wharf, as heretofore stated, and you had found her drifting broadside, under the pressure of the wind and tide and a severe gale, and you had desired to turn her bow to face the wind and tide so as to bring the power of steam to act upon the vessel in propelling her forward against the wind and tide, would you have used the anchor on the windward side or on the lee side as a means for turning her head in the desired direction?

Answer. I would have let go the anchor on the lee side, which is in this case the port side, the same as Mr. Cralle did, so as to fetch her head round, so as to face the wind and tide. He had no chance to do any better than to let go his anchor, for the new wharf was near at hand, and there were vessels on the other side close to him, and there was no other way in which he could work the vessel.

Question. Do you know how long the steamer Flushing was lying on Hampton bar prior to the 8th of June, 1862?

Answer. I think she was sunk some time in March, and remained there till August, 1862, before she was raised.

Question. In what position was she lying?

Answer. She was lying sunk under the water; her bows and deck, fore and aft, and half her midships, was under water; the stern part was raised up out of the water.

Question. Was the stern part stationary, or movable by the action

99 of the water?

Answer. The front part of the middle of her lay hard on the shore, and that kept the stern stationary.

Question. Are you able, as a nautical man, to express any opinion as to the practicability of raising the Flushing in any short period, if prompt exertion had been made to do so, and proper instrumentalities had been employed?

Answer. I think the Flushing might have been raised some two or three months before she was raised, if proper exertion had been made; there was some good weather in April, and some in May, and for fully two months there was nothing done, and I saw no one round her during that time, while I was there; I was not there every day, but I was every other day. When I speak of no one round her, I mean no one trying to raise her.

Question. How long did you remain at Old Point after you had got free of the Flushing and anchored out, as you have heretofore stated?

Answer. We came in to the wharf that night, by order of the quartermaster, and moored at the new wharf, and there took on board some 30 or 40 sick and wounded soldiers, laid there all night, and next morning started for Philadelphia.

*Cross.*

Question. At what time on the day of the collision with the Flushing did the wind begin to blow from the east, and by what exact nautical term will

about an hour and a half; I had left them coaling the boat when I left it. I then walked down to the new wharf at my leisure, and I looked towards the old wharf, and not seeing her there, looked around, and saw her lying against the Flushing. Two tug-boats, attached to the Louisiana, were endeavoring to pull her away from the Flushing. I got into a small boat and went aboard the Louisiana, and when I went up into the gangway I remarked, now you have done it. I got on board on the upper deck, the tugs still pulling on her for about half an hour or so, before we could get her straight along, so as we could work her against wind and tide.

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Question. Did you examine the Louisiana, after you had returned on board, for the purpose of ascertaining whether she had parted from her moorings in consequence of the insufficiency of the ropes? And if you did make such examination, then state, if you please, what you found to be the condition of the capstan and the cleets through which the ropes had passed.

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Answer. We had a sufficient crew; we had, in all, two mates, two engineers, two wheelmen, eight deck hands, and six firemen, besides a cook and three waiters.

Question. What was the character of the several persons, respectively, employed on board said steamer, in reference to their ability to discharge their several duties? Were they competent and reliable, or not?

Answer. As far as my judgment went, I found them reliable and competent.

Question. What was the character of the engine on board said boat?

Answer. I cannot say; the engineer will explain that better.

98 Question. If you had been on board of the Louisiana when she parted her moorings from the old wharf, as heretofore stated, and you had found her drifting broadside, under the pressure of the wind and tide and a severe gale, and you had desired to turn her bow to face the wind and tide so as to bring the power of steam to act upon the vessel in propelling her forward against the wind and tide, would you have used the anchor on the windward side or on the lee side as a means for turning her head in the desired direction?

Answer. I would have let go the anchor on the lee side, which is in this case the port side, the same as Mr. Cralle did, so as to fetch her head round, so as to face the wind and tide. He had no chance to do any better than to let go his anchor, for the new wharf was near at hand, and there were vessels on the other side close to him, and there was no other way in which he could work the vessel.

Question. Do you know how long the steamer Flushing was lying on Hampton bar prior to the 8th of June, 1862?

Answer. I think she was sunk some time in March, and remained there till August, 1862, before she was raised.

Question. In what position was she lying?

Answer. She was lying sunk under the water; her bows and deck, fore and aft, and half her midships, was under water; the stern part was raised up out of the water.

Question. Was the stern part stationary, or movable by the action

99 of the water?

Answer. The front part of the middle of her lay hard on the shore, and that kept the stern stationary.

Question. Are you able, as a nautical man, to express any opinion as to the practicability of raising the Flushing in any short period, if prompt exertion had been made to do so, and proper instrumentalities had been employed?

Answer. I think the Flushing might have been raised some two or three months before she was raised, if proper exertion had been made; there was some good weather in April, and some in May, and for fully two months there was nothing done, and I saw no one round her during that time, while I was there; I was not there every day, but I was every other day. When I speak of no one round her, I mean no one trying to raise her.

Question. How long did you remain at Old Point after you had got free of the Flushing and anchored out, as you have heretofore stated?

Answer. We came in to the wharf that night, by order of the quartermaster, and moored at the new wharf, and there took on board some 30 or 40 sick and wounded soldiers, laid there all night, and next morning started for Philadelphia.

*Cross.*

Question. At what time on the day of the collision with the Flushing did the wind begin to blow from the east, and by what exact nautical term will

you describe the state of the weather previous to and at the time you made fast to the wharf on the morning of that day, and by what exact nautical term will you describe the state of the weather when you boarded the Louisiana after she struck the Flushing?

Answer. It was blowing from the east with a light air in the morning soon; we went to the wharf about 10 o'clock a. m.; it was then a light air still from the eastward; it was blowing almost half a gale when I boarded the Louisiana after she was alongside the Flushing; it was squally and the clouds heavy.

Question. From the time you made fast to the wharf till you left the Louisiana, was the wind increasing; and if so, was there or was there not sufficient in the appearance of things to indicate to you, as a nautical man, that on the change of the tide from ebb to flood, the pressure on the Louisiana from wind and tide would be much greater than when you made fast to the wharf?

Answer. Yes, sir; the wind was increasing slowly from the time I made fast till I left. Yes, sir; there was sufficient to indicate to me there would be an increase of pressure, and I put out double portions of lines or hawser to hold her there to the wharf; in ordinary times, ebb tide and light wind, three lines will hold her there.

Question. How many lines were put out, each at the bow and the stern, when you made fast in the morning; and when you say that three lines are sufficient to hold the Louisiana at that wharf, do you mean three at the stern and three at the bow, or only three altogether?

Answer. We put two out forward and one out aft, when she was
101 moored in the morning; I mean only three altogether.

Question. When did you put out the additional lines you refer to above?

Answer. It was about eleven o'clock a. m.; we then put out three parts of nine-inch lines additional aft; then, at the same time, three parts forward of nine-inch lines additional.

Question. Why did you put out five parts at the bow and only four at the stern, when you say that this mooring was intended to provide against the pressure of the flood tide?

Answer. According to my judgment I thought she had sufficient lines aft, and that was also the opinion of my officers.

Question. At 11 o'clock from which direction, bow or stern, was the greater pressure on the moorings, and which moorings should have been the stronger?

Answer. The pressure at that time was greater on the bow, and the moorings then should have been the strongest, as the current was running out.

Question. Was not this the reason for your putting the greater number of lines at that time at the bow?

Answer. Yes, sir; that was the reason why I put one more line forward than aft.

Question. On which moorings was the greatest pressure at the time the Louisiana broke away, and why?

Answer. She had a pressure on the whole of the lines that she was made fast to the wharf with; I should judge a little more pressure on the after ones than on the bows, by the wind and current coming in from the east from the sea.

Question. If you say that the pressure on the bow lines at 11
102 o'clock, when the wind and tide were in opposite directions, was greater than that on the stern lines, do you not know the fact without any conjecture, that at the time the Louisiana broke away, and when the wind and tide were both coming from the east, that the pressure on the stern

lines at that time, as compared with that on the bow lines, was much greater than the excess of the pressure on the bow lines over that on the stern lines had been at eleven o'clock?

Answer. I do know the fact that the pressure on the stern lines, under the circumstances spoken of in the question, was something greater than that on the bow lines when the Louisiana broke away; the pressure on the stern lines when the tide came round, as compared with that on the bow lines, was greater than the pressure on the bow lines had been greater than the pressure on the stern lines at 11 o'clock.

Question. For what reason did you put the bows of the Louisiana to the westward when you moved her?

Answer. A strong ebb tide was running out; when the tide is running out you put the bows to the westward, and when it is running in, to the eastward, if you moor at that wharf.

Question. Why did you not, previous to or at the time of the change of the tide on the day of the collision, put the bow of the Louisiana to the eastward, and strengthen her bow moorings after her change of her position; or without changing her position, why did you not strengthen her stern fastenings?

103 Answer. We went there with the ebb tide in the morning, and I put out those additional lines to make her fast; in my judgment I thought she would stay there as long as the wharf would with those moorings. If the wharf had been the length of the boat she could have been held there with those moorings as long as the same would have remained on the beach, but with the disadvantage at which the said steamer lay at that wharf, being an 80 feet front, you could not hold a boat there in a gale of wind from the east, joined with the tide, with all the hawsers you could put out. At the time the tide was turning with the wind we were coaling the boat in a big hurry to get off, and the doctors were shifting their wounded and sick at that time, and we were holding on, working away to get coaled up as soon as we could, and kept holding on, working, having sufficient fastenings there to hold the boat, as we supposed. I left about ½ past 12 o'clock to go to the hotel, as I before stated.

Question. I wish to know distinctly whether you did not change the position of the Louisiana, because you did not wish to interrupt your coaling and landing of soldiers, or because you thought the said steamer would remain securely at said wharf without such a change of position?

Answer. I did not want to interrupt the coaling or landing of the soldiers, and I thought there was no necessity for a change of position.

Question. Would the strengthening of the stern lines have interfered with the coaling or the landing of the soldiers?

Answer. It would not.

Question. When did you commence to land said soldiers, and when did you get through?

104 Answer. Commenced about 12 o'clock, I believe, as near as I can come at; when I went away, at half past 12 o'clock, they were still engaged at it.

Question. How long would it have taken by the use of proper means, anchors, steam, and so forth, to have changed the bow of the Louisiana, and put it to the eastward?

Answer. It would have taken an hour or an hour and a half.

Question. How long did it take you to go from your anchorage in the morning to said wharf and to moor the steamer at the wharf, and what was the distance from the anchorage to the wharf?

Answer. We laid about a mile and a quarter from the wharf, and from the time we commenced heaving the anchor, up to and including the mooring of said steamer at the wharf, was, I think, two hours, fully.

Question. After you left the anchorage, how long did it take you to get to the wharf and to moor there?

Answer. I can't tell you, but I can give you my opinion; I kept no note of the time; should judge it was about an hour.

Question. Why would it have taken you an hour and a half to have changed the bow of the steamer to the east just previous to the change of tide?

Answer. I would have had to take sufficient time to take in all the lines we had out; we would have then to have taken in the planks used
105 for coaling, also the gangway boards used for putting ashore the soldiers; and then we should have had to run out in the stream among all the vessels and turn our steamer round and come in among a large fleet of vessels lying in the road, which would have taken an hour and a half to do all this and get back to the wharf, moor the steamer, get out the lines and fasten them and get ready for operations.

Question. How far from the wharf would it have been necessary to go to turn said steamer around, supposing you used your anchors and steam, and how far from said old wharf in each direction were there any vessels at anchor or otherwise at the time referred to?

Answer. If we had started with steam we would have went out three quarters of a mile from the wharf, south course from the wharf, where we laid at; we would have to go out that far to clear the vessels, for they were lying some within 50 and some 100 yards from the old wharf, southwest course, and in different directions, round to southeast; they were lying in different directions. If we had then anchored and again weighed anchor, it would have taken two hours to accomplish this movement; by not anchoring we could have done it in an hour and a quarter or an hour and a half.

Question. On your trips from Baltimore to Old Point, have you ever moored the said steamer at said wharf with her bows to the westward on your arrival; if so, how long, with a moderate wind from the east, does it take you to leave said wharf and turn the bow of the said steamer to the eastward, on her return trip?

Answer. I have moored her with the bow to the westward at ebb
106 tide at that place; even in a moderate wind from the eastward it takes about three quarters of an hour after she has been released from her fastenings to turn round and put her bow to the east.

Question. Were the vessels you have spoken of as being near in different directions to said wharf at the time of the change of the tide, still in their several positions when the said steamer broke away, and were they at anchor, or how, and was such positions the usual anchoring places of vessels?

Answer. They laid at the same anchorage, except that they had swung round by the change of the tide; they anchor over the whole what they call Hampton Roads.

Question. To what part of the steamer was the 7½-inch lines fastened?

Answer. We had one forward at the bows and one at her stern; that was all that sized line we had out.

Question. When you say that if the old wharf had been of greater width you could have moored the Louisiana safely to it, do you mean to say that the weather on the day referred to was such that she could not have been moored to said wharf, as it actually existed, so as to have prevented her from breaking away?

Answer. I moored the steamer there that day and fastened her sufficiently, as I supposed, to make her safe till I was done work, and would be able to get away; at the time she broke away, I believe no lines would have held her there; it was blowing harder and harder.

Question. When did it commence harder and harder?

Answer. At 11 o'clock it was blowing a strong breeze; at 12 o'clock

107 it was blowing harder; and I suppose, at the time she broke loose, though I was not then there, it was blowing half a gale.

Question. When did you notice for the first time, on that day, that the wind was blowing a half a gale?

Answer. When I went on board the Louisiana, when she was alongside of the Flushing.

Question. Do you mean to say that no lines, no matter what their strength and number, if properly applied, would hold the Louisiana at said wharf in half a gale?

Answer. No lines, no matter what their number or strength, would hold the Louisiana at that wharf in half a gale; something was bound to give away, either the lines or the wharf, or the cleets of the boat.

Question. Why, with such a wind blowing, with your steamer at this wharf, did you leisurely walk from the doctor's quarters towards the beach and go to the new wharf at the time the Louisiana was lying alongside of the Flushing?

Answer. I came out of the fort at the doctor's quarters and went down to the beach at the new wharf nearly opposite the Flushing, walking along at my leisure. Had no thought of the Louisiana having been torn away from her moorings; I cast my eye down towards the old wharf where I had left her lying; I found she was gone from there, and cast my eye round the river towards the new wharf, and about 200 yards from the *the* new wharf saw her lying against the Flushing. I left the Louisiana so well secured that

108 I had no apprehensions about her; I knew the wind was blowing half a gale when I came down to the water; I could see how it was in the river. I could not tell inside the fort how strong the wind was blowing, and did not know till I got down to the river.

Question. Out of which sally-port did you come, and how far can you see the water before you get to the beach on your route from said sally-port?

Answer. I came out of the sally-port at the west end of the fortress; you can see the water from the sally-port—that is, the water in the harbor of Mill creek. You will have then to walk then about half a mile before you get to the beach opposite the Rip Raps; until you get there you can't see the open sea; the intermediate space is built up with houses.

Question. When you looked to the old wharf did you expect to see the Louisiana where you had left her securely moored, in your judgment?

Answer. Yes, sir; I expected to find her lying there.

Question. You say the wind was blowing a strong breeze at 11 o'clock, and harder at 12 o'clock; please state how it was blowing when you left the steamer.

Answer. When I left her, about ½ past 12 o'clock, it was increasing some, gradually along; she was lying easy at her fastenings, and in my judgment she was secure; I had no fear of her, or I would not have left her. After I left her the wind was increasing and becoming squally, as I think;

109 up to the time she broke loose the wind must have been increasing all the time.

Question. What additional lines had you on the Louisiana to those which were put out on that day, and did you not contemplate that the state of the weather might become such after you left as to render it the part of prudence that additional lines should be put out, and did you give directions to that effect, and to what part of the boat did you direct said lines to be attached?

Answer. We had some more nine-inch lines on board, some two or three laying about on deck. From my judgment of the weather I did not think, at the time I left the boat, that it would increase much. I called my officers together, and we consulted and thought there were sufficient lines to hold

there in almost any wind, and in half a gale. I told my mate, when I left, he could use his own judgment; if he thought proper and it came on to blow harder, he could get out more; I did not designate any particular part of the vessel to which the lines should be attached. If I had put out any I would have put out some aft and some forward.

Question. When were the hawsers with which the Louisiana was moored in the day in question purchased, and how long have they been in use?

Answer. They had been in use about a month; they were purchased from John Henderson; nearly all of them were new lines.

Question. On what part of the steamer did the cleets give way?

Answer. The one about midship gave way first, and then the forward ones.

110 Question. Were the lines aft fastened to cleets on the boat; and if so, did the cleets to which said lines were fastened give way?

Answer. I don't think the cleets aft gave way; the lines parted.

Question. Supposing the stern moorings parted first and the steamer swung round with the wind and tide; was not the strain then on the bow moorings much greater than when the stern moorings were fast; and when her stern was thus loose was or was it not a matter of necessity that her bow moorings should give way?

Answer. In the case supposed, the strain on the bow moorings would be greater; when she swung round with her side to the wind and tide it was a matter of necessity for her bow moorings to give way.

Question. Were either of the bow moorings fastened to the capstan on the boat?

Answer. Yes, sir; there was one fastened to it.

Question. Was not said capstan too small a one for the said steamer, and was it not already broken previous to said day?

Answer. It was large enough for that size steamer. It had not been broken.

Question. Did you not tell Captain Nimmo, of the Flushing, on the evening of the day of collision, that said capstan was too small and broken, and that you had made frequent applications for a new one?

Answer. No, sir.

Question. When you left your anchorage on the evening of said day, did you slip your anchors or not? If so, why?

111 Answer. After I had anchored in the middle of the channel in ten fathoms water, Quartermaster Tallmadge directed me to come to the wharf, and the wind was blowing half a gale with the tide setting in. I sent word to Quartermaster Talmadge that I could not get my anchor, and then he sent word off by a tug-boat that I must buoy my anchor and slip the chain. There was about fifty wounded soldiers lying on the wharf, on cots, and that I must take them on board. Then I came in alongside the wharf, according to Capt. Talmadge's orders. This was the new wharf.

Question. Why could you not get your anchors?

Answer. The wind and tide were setting against her powerfully. The windlass was hove with handspikes, and I could not raise it.

Question. Did you not state to Captain Nimmo, on the evening of said day, that the general outfit of the Louisiana was very poor; that there was no sufficient windlass on the boat, and that this was the reason why you had to slip your anchor?

Answer. No, sir; I made no such remarks to Capt. Nimmo.

Question. What did you mean when, on boarding the Louisiana, you said, "Now, boys, you've done it!" To whom did you address that remark?

Answer. I addressed the remark to no particular one; 'twas addressed to those in charge of the Louisiana; I did not mean anything particular by that remark.

Question. Did you not emphasize the word "have?"

Answer. No, sir.

Question. When you came alongside the Louisiana, in your boat,
112 did you not say, in substance, words to the following effect: "You have got into a pretty mess; it was nothing but damned neglect to let her get adrift; you can't be trusted; why in the hell didn't you make the boat fast, as I told you before I went away; you act like a stupid set of fellows, all of you?"

Answer. No, sir; I never made use of any such language.

Question. What made you ask your engineer whether he had steam enough to work the Louisiana, after she was afoul of the Flushing; and what suggested a doubt to you on the subject?

Answer. I never asked him, sir; he came to me, and told me he couldn't work her—the wheels were against the Flushing, and he was afraid to move the wheel, for fear of tearing it up.

Question. After you got free of the Flushing, were you able, with your own steam power, to get the head of your boat to wind and tide?

Answer. After those two steamboats pulled me round head to wind and tide and the wheels clear of the Flushing, I then went out and anchored about ¾ of a mile. We had power enough to work her, but had no sufficient space, until she was hauled round by the tug-boats—two large boats pulling on us.

Question. How had the tugs room enough to work, themselves, besides pulling the Louisiana, if the Louisiana was prevented, by want of room, from working herself?

113 Answer. The tugs came round and got their heads to wind and tide, so that they could manage themselves, and then got a large hawser to the bows of the Louisiana, and pulled her around from the Flushing.

Question. From what direction did those tugs come when they started to go to the relief of the Louisiana; and how did they get their heads to wind and tide?

Answer. They came out of what is called the Hole, from the west from Hampton creek, with their heads to wind and tide, come out close to the Louisiana's bow, and kept head to wind and tide all the time.

Question. Were they at anchor when they started to go to the Louisiana?

Answer. I do not know; when I saw them first they were coming up to the Louisiana's bows.

Question. How far off from the Flushing in each direction, and in what direction, were the vessels you have spoken of as lying near the Flushing; and how many were they?

Answer. They were lying from west-southwest, round south to east-southeast. They were from fifty yards, sixty yards, seventy yards, 100 yards, 125 yards, and at different distances. I suppose there were some 20 or 30 within that distance of the Flushing; around the whole harbor, there were from 150 to 200 vessels—the place was full of them.

Question. How far from the Flushing were any of said vessels on the east, southeast, or south?

Answer. From 50 yards, 75 yards, 100 yards, and different distances.

Question. How far from the Flushing did the tugs take you?

Answer. So soon as they pulled us round and our wheels were clear of the Flushing we worked the Louisiana ahead with our own steam.

Question. What is the tonnage of the Louisiana; what sized anchors and chains had you; and in what condition were said anchors and chains on that day?

Answer. She is eleven hundred tons; our big anchor—that is, the star-

board anchor—weighed fifteen hundred pounds; the chain attached
114 to it was an inch and a quarter chain, about sixty fathoms long; our small anchor that we used (the port anchor) weighed 1,025 pounds; the chain was large, seven-eighths of an inch—about fifty fathoms long; the anchors and chains were in good condition.

Question. Where were said anchors and chains placed when you left said steamer at mid-day, and how long would it take to throw said anchors into the water from their said position?

Answer. Our port anchor was hanging to the cat-head, and about ten fathoms of chain overhauled ready to let go any moment we wanted to. The starboard anchor was on the forecastle deck. It would take twenty minutes to get the big anchor ready to throw overboard, where it was placed on the forecastle deck.

Question. Why did you direct the large anchor to be in a similar position to the smaller anchor so that it might have been thrown over at a moment's notice?

Question. Where was the port anchor when you boarded the Louisiana at the Flushing? What was the condition of its chain?

Answer. It was on the bottom in the water; and they said the chain had parted.

115 Question. When you say nothing could have been done as to the management of the Louisiana, except what Crawley did, state how you know what he did, and whether you know, of your own knowledge, by what course and in what manner the Louisiana went from the old wharf to the Flushing.

Answer. I do not know what Crawley did, of my own knowledge. If I had been there I would have let go my anchor, and tried to have got her head to wind and tide. I do not know, of my own knowledge, but she must have drifted about a west course from the old wharf; she drifted broadside with the wind and tide.

Question. When would you have dropped your anchor?

Answer. After she broke her fastenings; after she parted her lines and I found that I could not work her, in a short space like that, between the wharf and the vessel, I should have let go my anchor, and tried to get her head to wind and tide.

Question. Would not a man of competent skill know, the moment her moorings parted, whether there was or was not sufficient room to work said steamer without the use of her anchor so as to get her head to wind and tide, if vessels were within the distances and in the positions from said wharf which you have heretofore described them as occupying?

Answer. I don't think any man could have done more than to look around and then let go his anchor.

Question. Suppose the starboard anchor on your boat had been let
116 go the moment her moorings parted, would not the said anchor have held the Louisiana?

Answer. No, sir; I do not believe it would have held her there; the bottom is so hard it would not have taken hold, and especially as it wasn't ready. It would have taken 20 minutes to have gotten it ready.

Question. How do you know that the bottom is there such that said anchor would not have held; and did you ever throw out an anchor there which did not hold?

Answer. I have sounded there with the lead line, close by the wharf, and I've let go in the tideway in a calm, and have dragged off until the bottom got soft and muddy.

Question. How far from said wharf, and in which direction, did you find said bottom to be muddy?

Answer. From southwest round south and southeast, from 75 to 100 yards from the wharf, either south, southeast, or southwest.

Question. Did you not say, in answer to a former question, that on said day there was a vessel or vessels anchored within 50 yards of said wharf?

Answer. Yes, sir; I said from 50, 75 to 100 yards, they were anchored so thick that they just had room to swing clear of each other. This was when McClellan was on the peninsula and the place was full of transports, from ships down to pungies.

117 Question. Of all said ships, vessels, &c., so anchored, did a single vessel drag her anchor that day so as to come into collision with any other to its injury, or was there any parting of moorings in said harbor on that day, or accident to the shipping there other than what happened to the Louisiana, as above detailed? If so, give the name of the ships and vessels so colliding, &c., and the injury done.

Answer. I do not know. I had as much as I could attend to with the Louisiana. I did not hear of any. I had no time to inquire. I left early the next morning.

Question. Have you ever been engaged in the business of raising sunken steamers or vessels, or studied that subject?

Answer. No, sir; I never have had anything to do with it, or studied that subject.

Question. Was not the place where the Flushing lay a shoal or bar; and previous to the grounding of the Flushing there, had there not been a buoy there to warn vessels off?

Answer. It was on the end of the bar where the Flushing was laying, called Hampton bar. There was a buoy there, but whether there was when the Flushing was there I am unable to say.

Question. Had you, at or about 9 o'clock of the evening of the day of the collision, a conversation with Capt. Nimno, of the Flushing, in which, on his calling your attention to the damages done by your steamer to his, you said to him, in substance, words to the following effect: I have seen the whole of the damages, and would rather have given 100 dollars out of my own pocket than had it done; that I charged my mate particularly, when

118 I left the boat about one o'clock, to put out extra lines to secure her to the dock, as the flood tide was then making; that I had left the boat in charge of the mate; and that the mate had not obeyed my orders by getting out the extra lines?

Answer. I had no conversation with Captain Nimno at 9 o'clock that evening, and never made use of the asked at any time. Captain Nimmo came to me, about 6 o'clock in the evening, and said, Captain, will you go aboard my boat and see the damage what the Louisiana hath done? I told him I had no time to go aboard; that Mr. Falls, the president and agent of the company, was standing on the wharf, and he had better go and talk to him; perhaps he would give him satisfaction about the damage. Capt. Nimmo went to Mr. Falls; I saw them talking together; what satisfaction Mr. Falls gave him, I do not know. That is all the conversation that Mr. Nimmo and I had together.

Question. At or about 9 o'clock on said evening, and in the conversation above alluded to, did not Captain Nimmo ask you to go aboard the Flushing with him, in order that you two might view the extent of the damages; and, in answer to such proposal, say it was quite unnecessary, that you had seen it all, and that the owners of the Louisiana would pay the damages without any trouble, or words to that effect?

Answer. I had no conversation after 6 o'clock with Captain Nimmo, and made use of no such remarks to him at any time.

119 Question. What time did Mr. Falls leave Fortress Monroe on that day, and where did he go?

Answer. He left in the Adelaide about 10 minutes after six for Baltimore, after he had this conversation with Mr. Nimmo.

Question. What is the usual time for the Baltimore boats to leave Old Point?

Answer. About 6 o'clock is the usual time; sometimes before and sometimes after; sometimes have to wait for the quartermaster's mail. The Adelaide was also at that time in the service of the government.

Question. How long did you ride at anchor on that day after the collision?

Answer. About an hour and a half.

Question. Was it sundown or not when you got to the new wharf?

Answer. The sun was not down; it was 6½ to 7 o'clock when we got to the new wharf.

Question. Who was the officer in charge of the Louisiana while she thus lay at anchor on that afternoon?

Answer. Mr. Crowley was in charge of her; I had gone ashore to see Mr. Falls; after I saw Mr. Falls, I went immediately on board the Louisiana and brought her in.

Question. Where did this conversation that you say you had with Captain Nimmo take place?

Answer. When I came ashore after anchoring the Louisiana, and on the new wharf.

Question. Had you any conversation with him on board of the Louisiana?

Answer. No, sir.

Question. Was he on the Louisiana at any time after you came to the new wharf?

120 Answer. If he was, sir, I did not see him.

*Direct examination resumed.*

Question. You have stated that you went to the old wharf by direction of Quartermaster Talmadge, in the U. S. service. If you had deemed it expedient as a measure of safety to have removed from the old wharf to the new, would you have felt at liberty to have done so without his orders?

Answer. No, sir, I would not; I was ordered there, and I had to obey their orders.

Question. If you had deemed it expedient to have changed the position of the Louisiana at the old wharf, so as to have placed the bow of the steamer to the east instead of to the west, would you have felt at liberty to have suspended the coaling and other operations without the order of Quartermaster Talmadge?

Answer. No, sir.

Question. Having moored your vessel in the way you did, when you first arrived at the wharf, and having made her fast by fastenings which you deemed sufficient to *to* hold her in safety, would you have deemed it prudent and safe to loose the vessel from her moorings and tried the experiment of going out for the purpose of changing the position of the bows at the wharf?

Answer. No, sir; it would not have been prudent at the time she broke loose; at the time I left there was no necessity for doing it.

Question. State, as a nautical man, whether, lying as the Louis-

121 iana was at said wharf, it would have been a safe or a perilous experiment to have cast off and gone out for the purpose of changing the position of the bow at the wharf.

Answer. I could have done it; at the time I left she was safe at the wharf, well moored, and the tide was not coming so rapidly as it did afterwards; with a rapid tide and heavy wind it would not be prudent to cast off, if we could hold on.

Question. Were there any orders from Quartermaster Talmadge, or any officer of the government, directing the suspension of operations in coaling and in landing the wounded soldiers, or directing that the berth of the steamer should be changed, or that her position in any respect should be altered?

Answer. I had no such orders at all.

Question. Is it usual on board of a steamer to have both anchors, where two anchors are provided, hanging at the cat-heads?

Answer. No, sir, without she is lying to for some several days, or unless it is blowing heavy—then he would have it ready for use in case she commenced dragging; when lying at wharves or passing from one to another we generally have one ready.

Question. Assuming that the object in dropping an anchor is not to ride to an anchor, but to shift the directions of the bows of a steamer, intending to rely on the power of her steam for her immediate propulsion, would you drop two anchors or only one; and if only one, would you drop the windward or the leeward anchor?

Answer. I should drop the leeward anchor—that is, the port anchor, if she was drifting to the westward with her head north, in order to bring
122 her head round to the wind and tide, so as to use the steam; the object would be to check her and bring her bows around.

*Cross-examination resumed.*

Question. Did you ask leave at any time, on the day of the collision, of the quartermaster, either to moor at the new wharf or to change the position of the bow of the Louisiana from westward to eastward at the old wharf?

Answer. I asked him which wharf I must go to, and he told me the old wharf, to coal and land the wounded; I neither asked permission to change my position at the old wharf, nor did I ask permission to go to the new wharf originally, nor to leave the old wharf for the new one.

W. F. PORTER.

And I, John Hanan, commissioner as aforesaid, do also certify that said deposition was taken by consent, and that the proctors for the appellants and appellee were present at the taking of the same; and I also certify that said deponent was by me first carefully examined and cautioned and duly sworn according to law to testify the whole truth, and the foregoing deposition was then reduced to writing, and thereafter subscribed by said deponent in my presence. And I do further certify that I am not counsel or attorney for either of the parties to said cause, and that I am not interested in the event thereof.

Given under my hand and seal at the city of Baltimore, within the district of Maryland, this 11th day of May, A. D. 1863.

[SEAL.] JOHN HANAN, *U. S. Com'iss.*

123 This charter-party of affreightment, made and concluded on this eighth day of January, in the year one thousand eight hundred and sixty-two, between J. Brant, jr., agent of the owners of the steamer or vessel called the Louisiana, of Baltimore, Md., of the burthen of 1,200 tons or thereabouts, at present lying at Annapolis, Md., and commanded by Phillips, of the one part, and John Tucker, general transport agent of the U. S. War Department, of the other part, witnesseth: That the said J. Brant, jr., agent, does, and doth hereby, grant and to freight let, and the said John Tucker, general transport agent of the U. S. War Department, does and doth hereby grant and to freight take the said steamer or vessel called the Louisiana, to load at Annapolis, Md., or elsewhere, and proceed on the voyage as hereinafter

mentioned, (always reserving sufficient room for the storage of the vessel's cables and materials, and the accommodation of the officers and crew.) And thereupon J. Brant, jr., agent, and his heirs, executors, administrators, and assigns, doth hereby covenant, grant, and agree, to and with the said John Tucker, general transport agent of the U. S. War Department, his executors, administrators and assigns, that the said steamer Louisiana now is, and shall be kept and maintained during the of the voyages mentioned in this contract, tight, staunch, strong, and well and sufficiently manned, victualled, tackled, apparelled and ballasted, and furnished in every respect fit for merchants' service, at the cost and charges of her owners; and shall, this day of the date hereof, be ready to receive on board, whenever there tendered alongside by the quartermaster United States army, their factors or assigns, such goods as they shall order and direct, and the said vessel can
124 conveniently stow and carry; and when laden shall sail with the first good opportunity from the port of Annapolis, Maryland, or elsewhere, and proceed direct to such ports or places as ordered by the quartermaster U. S. army, and deliver cargo to the quartermaster or duly authorized agent of the War Department; all port charges will be paid by the War Department. After leaving the port of Annapolis, Md., all cargo to be received and delivered within reach of said vessel's tackles, and said vessel shall deliver her cargo in good order and condition, (the dangers of the seas and navigation and the restraints of princes and rulers being always excepted.) In consideration whereof, the said John Tucker, general transport agent of the U. S. War Department, his heirs, administrators and assigns, hereby bind and obligate it and them to employ the said vessel on the voyage or voyages aforesaid, and that as a freight or hire of the said vessel, during the term of this contract, they will pay or cause to be paid the full and just sum of eight hundred dollars per day for each and every day said steamer may be employed, until the said steamer is returned to the said J. Brandt, jr., agent, at the port of Baltimore, Maryland, and to furnish all fuel from the above date until said steamer is returned to the said J. Brandt, jr., agent, to become due, owing and payable, in the manner and form following, that is to say, payable to the order of J. Brandt, jr., agent, on the eighth day of each month, as the same shall become due, at the Quartermaster Gen-
125 eral's office of the U. S. War Department, at Washington, upon presenting certificates signed by the duly authorized agents of the U. S. War Department that said vessel has safely delivered her cargo according to bills of lading, and faithfully performed her part of this contract; this contract to continue in force for the full term of three months from the above date, and as much longer as said vessel may be required by the U. S. War Department, said U. S. War Department taking the war risk upon the aforesaid vessel; said steamer is valued at one hundred and twenty-five thousand dollars.

To the true and faithful performance of all which several conditions, covenants, and agreements, to be done, paid, and performed, the said parties bind and oblige themselves, their and each of their heirs, administrators and assigns, firmly by these presents, (and the said vessel, freight, or goods, loaden or to be loaden,) each to the other in the penal sum of , to be paid by the party defective to the party complying herewith.

In witness whereof, the said parties to these presents have hereunto set their hands and affixed their seals, on the thirteenth day of January, 1862.

(Signed) J. BRANDT, JR. [L. S.]
JOHN TUCKER. [L. S.]
*General Transport Agent U. S. War Department.*

Signed, sealed and delivered in the presence of us—
GEO. W. TOBIAS, *witness to the signature of John Tucker.*

127 UNITED STATES OF AMERICA, *District of Maryland, ss:*

I, John Hanan, a commissioner of the circuit court of the United States for the fourth circuit, in and for the district of Maryland, appointed by said court in pursuance of the act of Congress entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," do hereby certify that on this 28th day of April, 1863, at my office in the city of Baltimore, within the district of Maryland, personally appeared before me William H. Skinner, a witness for the appellee, in a certain cause depending in the circuit court of the United States for the Maryland district, on an appeal from the United States district court of Maryland, wherein the Flushing College Point and New York Steam Ferry Company is appellant, and steamer Louisiana is appellee. And the said witness being by me carefully examined, and cautioned, and duly sworn, according to law, to testify the whole truth, and being examined on behalf of the appellee deposes as follows:

Question. Where do you reside, and what is your occupation?

Answer. I reside at No. 56 Hill street, south Baltimore, and am a shipbuilder, one of the firm of William Skinner & Sons.

Question. Do you know the steamer Louisiana, belonging to the Baltimore Steam Packet Company? and if you do, state whether said steamer
128 was brought to the yard of William Skinner & Son for repairs in the summer of 1862; and if you do, state the month and day of the month when she was so brought, and what repairs, if any, she needed, and what repairs were made. As a part of your answer to this question state whether the hull of said steamer or her keel, or any part of said steamer, exhibited signs of abrasion from contact with a chain or other substance in the vicinity of the larboard bow, or elsewhere.

Answer. I do know said steamer; she was brought there for repairs in the summer or fall of 1862, I am not sure which; I cannot state the month or the day of the month without looking at my books. The principal repairs was about her guards; we stripped her copper in places, but not entirely; our object in removing the copper was to find the places where the boat leaked; we found the leaks and repaired them. We found nothing of the kind inquired of in the last part of this question, no signs of abrasion; if there had been any I should certainly have seen it, as that is part of the business to which I personally attend.

Question. You spoke of repairs to the guards of said steamer; state the locality where such repairs were needed, and state also whether, from the appearance of the defects, the injury appeared to be the result of contact with any object.

Answer. I formed the opinion that the repairs were the natural
129 defects caused from lying alongside of the wharves. The repairs needed were chiefly amidships.

*Cross-examined.*

Question. State what you mean by abrasion in your answer to one of the questions in chief; and do you mean to say that you examined all parts of the said steamer so carefully that if there had been the marks on her which would have been caused by the said steamer passing over her anchor chains they would have been observed by you; and state whether you can swear positively that there were no such marks.

Answer. I mean by abrasions, scars or marks on the boat, as being rubbed to such an extent as to require repairs. If there had been any marks sufficient to require repairs I should have observed them; but there might

have been marks from the chains which, not requiring repairs, I would not have observed. I can't swear positively that there was no such marks; I have no recollection of any marks of any kind caused by the chain.

WM. H. SKINNER.

And I, John Hanan, commissioner aforesaid, do also certify that said deposition was taken by consent, and that the proctors for appellant and appellee were present at the taking of the same. And I do also certify that the deponent was by me first carefully examined and cautioned, and duly sworn according to law, to testify the whole truth, and the foregoing deposition was then reduced to writing by me, and thereafter subscribed
130 by the said deponent in my presence. And I do further certify that I am not counsel or attorney for either of the parties to said cause, and that I am not interested in the event thereof.

Given under my hand and seal, at the city of Baltimore, within the district of Maryland, this 28th day of April, in the year of our Lord one thousand eight hundred and sixty-three.

[SEAL.] JOHN HANAN, *U. S. Com'r.*

131 UNITED STATES OF AMERICA, *District of Maryland, sct:*

I, John Hanan, a commissioner appointed by the circuit court of the United States for the fourth circuit, in and for the Maryland district, pursuant to the act of Congress entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," do hereby certify that on the 25th day of April, A. D. 1863, at my office, in the city of Baltimore, within the district of Maryland, personally appeared before me John B. Ely, a witness for the appellant in a certain cause depending in the circuit court of the United States for the fourth circuit, in and for the district of Maryland, on an appeal from the United States district court of Maryland, wherein the Flushing College Point and New York Steam Ferry Company are appellants, and the steamer Louisiana is appellee; and the said witness being by me carefully examined and cautioned, and duly sworn, according to law, to testify the whole truth, and being examined on behalf of the appellee, makes oath, deposeth, and saith as follows, to wit:

Question. Are you acquainted with the harbor about Fortress Monroe?

Answer. I am.

Question. You will please describe the position and character of the wharf usually called the old wharf, and also the position and character of the wharf commonly called the new wharf, sometimes the Baltimore
132 wharf; and also to state, as accurately as you can, the distance between said wharves, and whether the channel is direct from one to the other, or whether there is any shoal water in any, and what, part of the distance between them.

Answer. The old wharf is built in the form of a T, the outer end is little over 82 feet in width; there is a spring-bumper at the end, which was intended to protect vessels moored at said wharf from coming in violent contact with the end of the wharf. The front of the wharf faces the open ocean, looking nearly towards Cape Henry; the tide is very swift around here, and curves in. The wharf belongs to the United States, and is under the direction of the U. S. Engineer department, and the Coast Survey maintain a tidal register and a tide-gauge. I recently built a tide-gauge and repaired the lower part of the tidal register. Vessels cannot lie at the side of the wharf; the only place used to moor vessels is at the front of the wharf. The Baltimore wharf is a very large wharf—a much larger one than the old one—about 150 feet front. The distance between the two wharves is

about 1,700 feet, or thereabouts. The channel runs nearly direct; there is a small circuit there; it deepens out towards the Rip Raps and Sewall's Point. Vessels can lie much more securely at the Baltimore wharf than at the old wharf, because they can be more securely fastened and less exposed in rough weather. A vessel of the length of the Louisiana would be
133 safe at the Baltimore wharf, in all ordinary times, because of its greater width, and because it is less exposed to the wind and waves; whereas a vessel of such considerable length, moored at the old wharf, has the double disadvantage of the narrowness of the wharf and the greater force of the wind and tide.

Question. Do you know Hampton bar? And if you do, state its distance from the new wharf as nearly as you can.

Answer. I know Hampton bar, and knew the point where the buoy was at the end of the bar. It is about 250 yards—not more than that—from the end of the Baltimore wharf to the buoy. This, of course, would make the distance from the old wharf to the buoy less than twenty-five hundred feet.

Question. Have you any knowledge of the steamer called the Flushing being aground, at any time, on Hampton bar? And if you have such knowledge, state, if you please, whether you yourself saw her there aground, and in what condition she was when you saw her.

Answer. I saw the steamer Flushing aground on Hampton bar; her stern appeared to be on the bar, and her bow was tipped under water. I saw vessels engaged in the effort to raise her. I never went aboard of her, but I noticed the side of the wheel-house appeared to be knocked away. This was some time in May, and before the collision with the steamer Louisiana.

Question. From your acquaintance with the harbor, are you able to state whether or not there is at a point between the new wharf and the side of Hampton bar where the current is unusually strong and likely to
134 affect a steamer or other vessel brought suddenly within its influence?

Answer. If a vessel was drifting past the new wharf, endeavoring to get round the beach, into what is called the Hole, or inner harbor, she would be apt to be turned by the action of the opposing currents off from her direction. In case of a large vessel, like the Louisiana, drifting, she would be very apt to be thrown round and prevented from making the inner harbor.

JOHN B. ELY.

And I, John Hanan, commissioner aforesaid, do hereby certify that said deposition of John B. Ely was taken by consent; and I do also certify that the deponent was by me first carefully examined and cautioned, and duly sworn, according to law, to testify the whole truth; and that the foregoing deposition was then reduced to writing by me, and thereafter subscribed by said deponent in my presence; and I do further certify that I am not a counsel or attorney for either of the parties to said suit, and that I am not interested in the event of said cause.

Given under my hand and seal, at the city of Baltimore, within the district of Maryland, the 25th day of April, in the year of our Lord one thousand eight hundred and sixty-three.

[SEAL.]

JOHN HANAN, *U. S. Com'ss.*

135 THE UNITED STATES OF AMERICA, *District of Maryland, to wit:*

I, John Hanan, a commissioner appointed by the circuit court of the United States for the fourth circuit, in and for the Maryland district, pursuant to an act of Congress entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the

United States," do hereby certify that on the eighth day of May, in the year of our Lord eighteen hundred and sixty-three, at my office, in the city of Baltimore, within the district of Maryland, personally appeared Alphanus K. Cralle, a witness for the appellee in a certain civil cause depending in the circuit court of the United States for the Maryland district, on an appeal from the United States district court of Maryland, wherein the Flushing College Point and New York Ferry Company is appellant, and the steamer Louisiana is appellee. And the said witness being by me carefully examined and cautioned, and duly sworn, according to law, to testify the whole truth, and being examined on behalf of the appellee, deposes and says as follows:

Question. State, if you please, whether, on the 8th of June, 1862, you had any connexion, and in what capacity, with the steamer Louisiana, belonging to the appellee.

Answer. I was on board of her, and first mate of her.

Question. In what service was said steamer at that time engaged?

Answer. In the employment of the government of the United States, under charter from the owners.

Question. At what wharf, if any, was said steamer moored on said day, and at what place?

136 Answer. At the old wharf at Old Point.

Question. State, if known to you, whether said steamer had gone to said wharf by direction of any and what officer of the government of the United States; and also state the purpose or purposes, if any, to be accomplished at that time by going to that particular wharf.

Answer. We were ordered there by the government officer to land the sick and worst of the wounded, and also to coal.

Question. State, if you please, whether the government had provided at said wharf a supply of coal; and also state whether coal was provided at or in the vicinity of any other wharf there.

Answer. That was the nearest wharf to the coal; there was no coal at any other wharf; all the steamers in the government employ went to that wharf to get coal.

Question. What was the direction of *of* the tide when you took your position at said wharf; and how was the bow of the steamer with reference to the tide?

Answer. It was a strong ebb tide; and when her bow lay a west course, the steamer lay head to tide.

Question. How was the wind at the time the steamer was first moored at said wharf on that day, and state any changes that may have taken place during that day in the direction or strength of the wind, and in the direction and strength of the tide; and in answering this question be good enough to state, as nearly as you can, the time you first moored at said wharf, and the particular times of any change or changes which you may

137 state as having taken place in reference to wind and tide, or either.

Answer. The wind was blowing from the eastward, and it continued to blow in the said direction until after the steamer parted her moorings. The wind was blowing heavy when we went there, but the tide was then stronger than the wind and counteracted its force. The tide commenced to run flood about 12 o'clock. The wind increasing, and blew sometimes harder at that hour than it had done when we arrived at the wharf, which was about 9 o'clock a. m. After that it blew in squalls. When the wind and tide were both from the same direction, the pressure on the stern of the boat was increased, and we had made her fast, as we supposed, to hold her against any wind and tide. This was the judgment both of the captain and myself.

Question. After the vessel had been moored was any additional line put out? And if so, from what part of the vessel did it proceed; and how was it attached, if attached, to the wharf?

Answer. After we first landed we went to work and got out lines sufficient to hold her. We only had three lines out—one at the stern and two forward—when we first landed. We afterwards went to work, got out five lines forward, four aft, and the bites of these lines went over the same posts, which in effect doubled the number. We went to work and hauled in the slack of them, so that the strain upon all would bear alike.

Question. Have you had experience of any, and how many, years as a nautical man? And if yea, do you consider yourself competent to form a reliable opinion as to the sufficiency of fastenings to hold a steamer
138 of the size of the Louisiana safely at her moorings when lying as said steamer was at said wharf? If yea, state whether, in your judgment, sufficient precautions had been taken with the moorings of said steamer, considering the direction both of wind and tide.

Answer. I have been steamboating 8 or 9 years, acting as mate or pilot. I have been in large steamers of all classes, and I think I know as much how to manage, to make a boat fast, or to run her, as any other man; and, according to my judgment, I think she was sufficiently made fast to lay at that wharf.

Question. How do you account, then, for the fact that said steamer broke from her moorings whilst fastened in the way you have stated? And if you shall say that it was from the combined action of pressure of the wind and tide, then say whether, in your opinion, the supply of additional fastenings, by increasing the number of lines, or their position, would have insured the safety of the steamer at her said moorings.

Answer. It was flood tide, squally winds from the eastward, and I could not get any more lines to do any more good than what I had out, according to my judgment.

Question. Suppose you had increased the number of lines indefinitely, and a sudden squall of wind co-operating with the tide had struck said steamer in the way—she was struck at the time she parted her moorings, would or would not some part of the boat or some part of the wharf have been forced to give way, even if the lines thus indefinitely increased, as
139 supposed in this question, had not done so?

Answer. If we could have got out that many lines something must have given way—boat, wharf, and all. The wharf was short, not more than 70 or 80 feet, and the steamboat was about 275 feet long, and we put out as many lines as we could possibly get out.

Question. State, if you please, what gave way of the fastenings of said steamer, and also state what part or parts, if any, of the steamer gave way?

Answer. When she broke away, all her lines aft parted, and when she came around, she parted all forward. She broke one of the cleets forward and also pulled the capstan out.

Question. From what parts of the boat forward, other than the cleets and the capstan, could lines be carried out with prudence and safety to be fastened to the wharf?

Answer. No, sir; we always make lines fast both forward and aft; we have forward what we call after-spring line, and there is a forward-spring line, a bow line; and aft we call one the stern line, and the other the forward spring. All these lines run through the chocks and are fastened to the cleets, and one line forward fastened to the capstan; when so many lines are put out we have to fasten one to the capstan; there is not room on the cleets for so many lines.

Question. Had you any orders from the government officers, by whose

direction the vessel was moored at said wharf, to go to any other wharf or to go to sea, or to make any other change, at any time prior to the breaking loose of said steamer from her moorings?

Answer. I heard the officer give orders to the captain to come in
140 to that wharf. The captain said he wanted coal, and the officer told him to lay at that wharf until further orders. We were coaling at one gangway just forward of the boiler—we have two gangways forward—and at the other gangway we were landing from the steamer wounded soldiers who were too much injured to travel to the north, and taking in their place some who were convalescent. We had to use both forward gangways because the wharf was so narrow we could not use the after gangway. There were no orders given to change; we had to lay there.

Question. If you had been disposed to change the position of the bow of the steamer from west to east, and had deemed it prudent and safe to have made the effort to do so, by taking in your gangways, suspending operations, loosening the fastenings, and going out for the purpose of returning, so as to change the position of the bow of the steamer, what length of time, in your opinion, would have been necessary, supposing that could have been done with safety, to have accomplished this manœuvre?

Answer. It would have taken us from an hour and a half to two hours?

Question. As a nautical man, would you have considered it prudent or safe, under the circumstances, to have made the attempt to lay her at the wharf after the tide had changed, with her bow heading east. Would you, at any time before said steamboat broke from her moorings, have
141 deemed it safe or prudent to have attempted such change?

Answer. I did not there was any necessity for the change; we were lying very nice at the wharf; nor did I think it necessary to do anything more than what we had done. The experiment would not have been a safe or prudent one at the time we broke away.

Question. Who was the chief engineer on board the steamer at said time?

Answer. There were two; the chief was Samuel Horney.

Question. State, if you please, what you may know of Samuel Horney as an engineer, as to his capacity, skill, attentiveness, and in other respects?

Answer. So far as I am able to judge, he is very attentive, steady man to his business as I have ever seen; I would as soon trust him as any man I ever saw to run an engine.

Question. State, if you please, whether, at the time of the said steamer broke loose, there was any steam in her boilers?

Answer. There was steam on her, but I cannot tell how many pounds. I had looked at the gauge about 10 minutes before we broke loose, but I did not notice how many pounds. We always kept steam at that time, when lying at the wharf or elsewhere, enough to work her in case of any accident. I know that her wheels were working backward and forward while lying at the wharf, which showed that she had steam enough to work her.

Question. When the steamer broke loose, state, if you please, whether you were then in command, and whether you gave any and what orders?

142 Answer. I was then in command. I went to the pilot-house and took charge of her. As soon as she broke loose, I rang the bells to back, to keep her off the beach. I rang the bell once after that to stop her, to keep her from getting foul of vessels lying abreast the wharf; I then having no room to back or to go ahead, let go the anchor to get her head to the wind and tide, then I could have gone out without any trouble. When I let go the anchor the chain snapped, and by that time I was afoul of the Flushing. We then got two tow-boats and pulled our stern off from the Flushing, and then we backed out.

Question. When you gave the order to back, after the steamer had broken loose, was said order obeyed or not, and did the steamer back or not?

Answer. The order was obeyed, and the steamer did back.

Question. When you gave the order to stop whilst the steamer was thus backing, was said order obeyed, and was said steamer stopped?

Answer. The order was obeyed, and the steamer stopped.

Question. When you first gave the order to back, you have stated that you did so to prevent the steamer from running upon the beach; state, if you please, whether or not, between said old wharf and the new wharf, there is or is not any shallow water or beach.

143 Answer. The distance from the old wharf to the new wharf is very short; I do not know the distance; I never measured it. About half way between the wharves there is a knoll of sand which makes out, and I backed her to keep off this, and also to keep off the new wharf, at the end of which a steamboat was then lying.

Question. How far had you backed before you deemed it necessary to give the order to stop?

Answer. About 50 to 75 yards, I guess.

Question. Before you gave the order to stop, had you backed sufficiently to have enabled you, without obtaining more room, safely to have made the effort to turn the bow of your steamer to the east? Had you room to have done so securely, or to have made the attempt with prudence?

Answer. I had not room to do it; I had to stop on account of a vessel that was at anchor.

Question. At the time you dropped your anchor was it your intention that the steamer should ride there to said anchor, or had you any other and what object in view?

Answer. I intended to go outside; I wanted to get her head to the wind and tide, and I could then have managed her very well and got out; I did not intend to ride at anchor at said place.

Question. Are you able to state what was the size of the chain attached to your port anchor?

Answer. $\frac{7}{8}$ of an inch, I believe.

144 Question. Are you able to state, from knowledge of your own, whether said chain had been previously used in riding to said anchor in rough weather; and if yea, then say whether, then or at any other time, anything occurred to cause you to doubt the strength and sufficiency of said chain?

Answer. The chain had been used in rough weather, and was strong enough. I had no reason at all to doubt the strength of said chain.

Question. After the chain had parted, did you at any time discover on the hull, the keel, or the stern of the Louisiana, any sign that said chain had rubbed against the same?

Answer. I never saw her keel, and did not see any damage on the stern or hull.

Question. At the time you dropped your anchor with the view, as you have stated, to turn the head of the steamer to wind and tide, was the steamer backing or going forward, or had you previously given the order to stop, and had said steamer stopped or not?

Answer. She had stopped, that is, the engine had stopped; at the time the anchor was dropped she was going sideways, a very little astern.

Question. As a nautical man, reflecting now upon the course of action which you adopted at the time for the safety of the steamer itself and
145 other vessels there, after said steamer had broken loose from the wharf, state, if you please, whether in your judgment, anything more could have been done with prudence than was done, and whether anything that was done was, in your opinion, as now entertained by you, imprudent or improper?

Answer. No, sir; I could not have done more than I did. There was nothing, in my judgment, imprudent or improper in what was done.

Question. After you had come in contact with the Flushing, what prevented you, if you had steam sufficient in the boiler, from separating at once from the Flushing by the power of the steam of your own vessel?

Answer. The tide was running and wind was blowing strong. The guard fender of the *of the* steamboat Flushing, at her stern, being high out of water, was higher than the guard fender of the Louisiana; and our wheel becoming entangled we could not use it without danger of breaking it and the engine also.

Question. Did the Louisiana sustain any damage from the collision; and if so, what?

Answer. She did; she started the guard fender up, and knocked the joiner's work in, and the wheels were bent.

*Cross-examination.*

Question. When did you finish coaling, and when did you commence on the day in question?

Answer. We commenced between 10 and 11 o'clock, and we had
146 not finished; when we broke away from the wharf we were still coaling.

Question. When did you finish landing the wounded soldiers?

Answer. I think between 3 and 4 o'clock.

Question. When did the said steamer part her moorings?

Answer. About half past four o'clock.

Question. At what hour were the additional lines you have spoken of put out?

Answer. We made her fast as soon as we went to the wharf; we put out more lines between 11 and 12 o'clock.

Question. When did the wind begin to be squally?

Answer. Between twelve and one o'clock.

Question. How long before the steamer broke away did you anticipate it at all?

Answer. I did not anticipate her breaking away at all; I thought we had out lines sufficient to hold her.

Question. When you first made fast at the wharf why did you put the bow of said steamer abreast of the wharf, leaving her stern not opposite to any part of the wharf; and was not the stern, while in this position, more exposed than it would have been if it had been abreast of the wharf with the bow extending beyond?

Answer. We could not land any other way at that short wharf; we had to put our bow abreast of the wharf so we could coal and land the wounded, with the ebb tide we had to put the boat in that position. I suppose
147 with flood tide we could have fastened the boat with the stern abreast of the wharf, but it would not have been safe to have done that. The stern was more exposed when in position described in the question than if it had been abreast of the wharf.

Question. Had you any anchors out, aft or forward, while lying at the wharf?

Answer. No, sir; we had none overboard while lying at the wharf.

Question. How many fathoms of chain had been paid out when the bow anchor chain parted?

Answer. Fifteen fathoms.

Question. How far did the Louisiana drift while these fifteen fathoms were being paid out?

Answer. She drifted about 100 yards, I guess.

Question. How far was the Louisiana westward from the old wharf when you ordered the engineer to back her, as you've testified in chief; and how far from the shore was she at that time?

Answer. She was about 20 yards westward of the old wharf when I ordered the engineer to back her; and she was not more than 15 yards from the shore.

Question. How far from the shore was the vessel lying which you say made you stop?

Answer. I suppose she was about 120 yards or so from the shore.

Question. How far from the Louisiana was said vessel when the Louisiana commenced backing?

Answer. I know that I had not room to work the Louisiana; I had to stop her; I cannot tell the right distance.

Question. Did you see the said vessel when you ordered the Louisiana to back?

148 Answer. Yes, sir.

Question. Why, if you had sufficient to work the said steamer easily and act your will, did you not avoid said vessel?

Answer. 'Twas not possible to do it.

Question. Why not?

Answer. I had not room to work the steamer.

Question. How far on either side of said vessel was there any other vessel?

Answer. The vessels were all anchored abreast of the wharf. There were no vessels on the north side of said vessel; there was the beach and the wharf; the vessel I stopped for was lying southward of the wharf; the bows of this vessel was to the east; there was no vessel lying east of said vessel, but there were plenty lying west of her. The nearest vessel to the west of this vessel was 40 or 50 yards distant.

Question. Where were the tugs or tow-boats lying when they started to the relief of the Louisiana?

Answer. They were lying in what we call the Hole, inside; that is, between Hampton bar and the bar.

Question. Was there a pile of stones laying on said bar, where the Flushing lay?

Answer. Yes, sir.

Question. What was the course and position of the bow and stern of the Louisiana when she struck the Flushing, and when she was pulled off from her?

149 Answer. When she struck her her bows were north and her stern south; she was laying the same when pulled off; the Flushing was heading east and westward; her bows were to the eastward.

Question. From what part of the Louisiana was the said anchor dropped, and how far from the bow end did it drop into the water?

Answer. We had it already rigged to let go from the cat-head; the boat was going stern a little when I dropped the anchor; it was rigged about 9 feet aft to the stern.

Question. What was the depth of water where you dropped anchor?

Answer. There was about six fathoms of water.

Question. What became of said anchor after it was dropped from the cat-head, and did it take hold of the bottom?

Answer. It must have taken hold, or it would not have broken the chain.

Question. How did it happen that with only six fathoms of water you had paid out 15 fathoms of chain, if the anchor took hold as soon as it was dropped?

Answer. We always have that much ready to pay out in that depth of water; we had it already overhauled.

Question. How could said vessel drift one hundred yards while said anchor was reaching the bottom in six fathoms water?

Answer. The wind was blowing so strong, and strong tide running, made her drift very fast; I can't tell how far she drifted from the time the
150 anchor was thrown out till it parted; no man can tell.

Question. What was the position and condition of your starboard anchor when said steamer broke loose?

Answer. We had it not ready to let go; it was laying on deck.

Question. Had you not an opportunity to observe the position of the anchored vessels in the roads and nearest to the wharf; and why did you attempt to go through them, when you say you could not get through them?

Answer. Yes, sir; I saw them all; I did not attempt to go through, because I knew there was no use to try that.

A. K. CRABLE.

And I, John Hanan, a commissioner as aforesaid, do also certify that the aforegoing deposition of A. R. Crable was taken by consent; and I do also certify that the deponent was by me first carefully examined and cautioned, and duly sworn, according to law, to testify the whole truth, and that the foregoing deposition was then reduced to writing in presence of said deponent, and thereafter subscribed by him in my presence. And I do further certify that I am not of counsel or attorney for either of the parties to the said cause, and that I am not interested in the event of said cause.

Given under my hand and seal, at the city of Baltimore, in the district of Maryland, this thirteenth day of May, A. D. 1863.

[SEAL.]

JOHN HANAN,
*U. S. Commissioner for Md.*

151 BY AUTHORITY OF THE UNITED STATES OF AMERICA.

*Inspectors' certificate, steamer Louisiana.*

STATE OF MARYLAND, *District of Baltimore, ss:*

Application having been made in writing to the subscribers, inspectors for this district, to inspect the steamer Louisiana, of Baltimore, in the State of Maryland, whereof the Baltimore Steam Packet Company is owner, and is master; having performed that service, now, on this second day of March, A. D. 1863, do certify that she was built at Baltimore, in the State of Maryland, in the year 1854, is of $1,126\frac{82}{95}$ tons burden, and is in all respects staunch, seaworthy, and in good condition for navigation, having suitable means of escape, from the main to the upper deck, in case of accident; that she is provided with 48 state-rooms, with 2 berths to each, and other permanent or movable berths to accommodate 200 cabin passengers, and has accommodation for deck or other class passengers; that she is a steamer, sailing to and from Baltimore and Norfolk, Va., a distance of two hundred miles; that she is provided with two low-pressure boilers, 16 feet long and $13\frac{1}{8}$ diameter, constructed of Penn'a charcoal iron of $\frac{4}{32}$, $\frac{8}{32}$, $\frac{9}{32}$ of an inch in thickness, and made in Baltimore; that they are in all respects conformable to law; that said boilers have been subjected to a hydrostatic pressure of 30 pounds to the square inch; that the maximum working power allowed was 22 pounds, determined by the rule prescribed by the act,
152 which is three-quarters of the hydrostatic pressure; that there is one safety valve, with an area of 120 inches; that the lead prescribed to it is such as to allow but 22 pounds pressure per square inch, left in charge of the engineer, and has 2 supply pipes of three-inch diameter, and has sufficient means to keep the water, at all times and under all circumstances, up to four inches over the flues; has one steam-pipe of 15 inches in diame-

ter; has one low-pressure engine of 60 inches in diameter of cylinder and 11 feet stroke; has 2 forcing pumps of 5⅝-inch plunge, with 51 inches stroke, worked by engine; has 4 gauge-cocks in the front of each boiler; has 2 water-gauges and 4 steam-gauges, all properly secured; has 3 forcing pumps of 8 inches stroke and 4 inches in diameter of plunge, and has 550 feet of hose, 60 buckets, and 12 axes; has 4 life-boats, in good order, made of metal, and oars for each; has marine seats—life-preservers—sufficient for 290 passengers; and has additional steering apparatus, independent of the steering wheel.

And we further certify that the equipments of the vessel throughout, including pipes, pumps, and other means to keep the water up to the point aforesaid; hose, boats, life-preservers, and other things, are in conformity with the provisions of the law; and that we declare it to be our deliberate conviction, founded upon the inspection we have made, that the vessel may be employed as a steamer upon the waters herein specified, without
153 peril to life from imperfection of form, materials, workmanship, or arrangement of the several parts, or from age or use; and we further certify that the said vessel is only to run within the following limits, to wit, from Baltimore to Norfolk, Va., touching at the intermediate places and back.

(Signed) GEO W. MORRIS. [SEAL.]
JOSEPH CRAGG. [SEAL.]

STATE OF MARYLAND, *ss:*

Personally appeared before me, the undersigned, a justice of the peace in and for said district, Geo. W. Morris and Joseph Cragg, duly appointed inspectors of hulls and steam-boilers for the district of Baltimore, and made solemn oath that the above certificate of inspection is just and true.

Sworn and subscribed before me on this third day of March, A. D. 1863.

B. T. NALE. [SEAL.]
(Signed) A. W. HOFFMAN, *Collector.*

I hereby certify that the above is a true copy of the original on file in my office.

——— day of ———, 186 .

UNITED STATES OF AMERICA, *District of Maryland, sct:*

I, John Hanan, a commissioner appointed by the circuit court of the United States for the fourth circuit, in and for the district of Maryland, pursuant to the act of Congress entitled "And for the more convenient taking of affidavits and bail in civil causes depending in the courts
154 of the United States," do hereby certify that on the 11th day of May, A. D. 1863, at the office of William Schley, esq., in the city of Baltimore, personally appeared before me George W. Morris, a witness for the appellee in a case depending in the circuit court of the United States for the fourth circuit, in and for the district of Maryland, on an appeal from the United States district court of Maryland, wherein the Flushing College Point and Steam Ferry Company are appellants, and the steamer Louisiana is appellee.

And the said witness being by me first carefully examined and cautioned, and duly sworn, according to law, to testify the whole truth, and being examined on behalf of the appellee, makes oath, deposeth, and says as follows:

1. Question. Will you be good enough to state what connexion, if any, with the government inspection of steamers employed in the service of the government you now have, and how long such connexion has existed?

Answer. I am the local inspector for the district of Maryland of the hull of steamers, and have been such for upwards of two years.

2d. Question. Do you know the steamer Louisiana, belonging to the appellees?

Answer. Yes, sir.

3d. Question. State, if you please, whether, prior to June, 1862,
155 and at what precise time, as nearly as you can remember, you made inspection of said steamer; and state, if you please, in what condition you then found her, not merely as to her hull but as to any other matters, if any, to which your attention may have been directed.

Answer. I think it was in March, 1861, we made the inspection and thoroughly examined her, and she fully answered the requirements of the law provided for the inspection of steamboats in all respects. There are two local inspectors, the other in the engineer department; we generally go together; it is our habit almost daily to visit the steamer, when in port, to see whether anything is wanting, as respects the hull, anchors, chains, pumps, and, in fact, all the equipment of the vessel; and this is particularly the case in reference to the bay steamers; and I will add, that we found the Louisiana, if anything, better equipped than boats usually are.

4th. Question. Your attention is particularly called to the anchors, chains, and ropes. Now be good enough to say what, in your opinion, was the equipment of the Louisiana in these respects?

Answer. The anchors were heavy enough, in proportion, and so were the chains; her port anchor was eleven hundred pounds, and the chains were seven-eighths; her ropes were hawsers, and strong enough to hold anything; but I don't know the size of the hawsers.

156 5th. Question. If, in your judgment, there had been any deficiency in anchors, chains, hawsers, or in any other respects whatever, would it not have been your duty to have required that such deficiency should have been removed by the substitution of sufficient anchors, chains, hawsers, and so forth; and would you not have required of the owners compliance with any requisition which you might have made in these respects at any time when such deficiency appeared?

Answer. Most certainly. It would also have been the duty of every officer on board of the steamer to have notified us if any deficiency existed that we had not seen.

6th. Question. Assuming the fact to be that the Louisiana was properly provided with anchors, chains, hawsers, and other equipments, how do you account for the fact: first, that the said steamer, having been fastened with nine lines to the wharf at Old Point Comfort, which is to be assumed by you to be the case in answering this question, broke loose from her fastenings; and, secondly, that, when the anchor was dropped from the port side the chain became broken, and the steamer drifted against the Flushing, as you will also assume in this question to be facts?

Answer. It is impossible to answer this question with any certainty;
157 these things are providential; sometimes guns that have been thoroughly proved and have been long used with safety, burst; steamboats' iron shafts, after being thoroughly proved, and long used, suddenly snap; I have seen vessels here, at O'Donnell's wharf, in Baltimore, not only fastened by cables to the piles, but moored with heavy chains, fore and aft, in a perfect gale of wind break loose, tearing away the piles, and drift sometimes to the middle ground, and sometimes to Canton. No calculation can be made to provide against casualties of this kind.

*Cross-examination.*

1. Cross-question. What was your trade or occupation before you were made government inspector?

Answer. I was a ship-joiner working in a ship-yard.

2. Question. State how often, and when, from January to June, 1862, you particularly examined the ropes or anchor-chains or anchors on said Louisiana, and where?

Answer. I am not able to state that particularly. I think she was away during that interval on the Burnside expedition; how long she was away on that expedition I can't state; when she came back from the Burnside expedition she underwent some repairs in her upper works, some slight repairs to her machinery.

158 3. Question. Did you carefully examine said anchors, ropes, and chains on her return? If so, what was the condition of each?

Answer. I did not examine them as particularly as I do on our annual inspection—everything appeared to be right.

Question. Were any new hawsers put on the said Louisiana at any time during said interval? If so, how many; and were they put on at your suggestion? And if none were put on, what was the condition of those which said steamer had during that time?

Answer. I can't state if there were any new ones put on, or not. It was more particularly the duty of the officers of the boats to report to the owners the necessity for new lines, when such existed; and if the owners did not supply them, then to notify us. I can't state what the condition of the lines were during her absence on the Burnside expedition.

Question. Did you examine the lines particularly on the return of said steamer from said expedition?

Answer. I am not able to state that particularly, but it was my duty to do so, and I suppose I did. We make annual inspections.

159 Question. Please state how you examined said lines on said occasion; what was their condition, how many did you examine, and what was the size in inches?

Answer. I can't answer without looking at my annual inspection.

Question. To what annual inspection do you refer, and when did it take place?

Answer. We examine them usually every year, but I can't tell when, except I refer to my reports.

Question. What was the size of the starboard anchor on the Louisiana in June, 1862, and her chain?

Answer. I am not able to answer that.

Question. What should have been its size?

Answer. I would suppose about nine hundred pounds. This is a matter that more properly belongs to nautical men; I do not know the size of the chain.

Question. Have you made any annual inspection of said steamer since May, 1861, and when was it; was it prior to June, 1862?

Answer. It was since then, I know; she was inspected in March, 1863; whether between March, 1861, and March, 1863, I do not know, but think likely it was.

GEO. W. MORRIS.

160 And I, John Hanan, commissioner as aforesaid, do hereby certify that said deposition of Geo. W. Morris was taken by consent. And I do also certify that the deponent was by me first carefully examined

and cautioned, and duly sworn according to law to tell the whole truth, and that the foregoing deposition was reduced to writing by me, and thereafter subscribed by said deponent in my presence, and I do further certify that I am not of counsel or attorney for either of the parties to said suit, and that I am not interested in the event of said cause.

Given under my hand and seal, at the city of Baltimore, within the district of Maryland, this 11th day of May, in the year of our Lord eighteen hundred and sixty-three.

JOHN HANAN, *U. S. Commissioner.*

163 THE UNITED STATES OF AMERICA, *District of Maryland, sct.:*

I, John Hanan, a commissioner appointed by the circuit court of the United States for the fourth circuit, in and for the Maryland district, pursuant to the act of Congress entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," do hereby certify that on the 11th day of May, A. D. 1863, at my office in the city of Baltimore, within the district of Maryland, personally appeared before me Solomon Pearson, a witness for the appellee, in a certain cause depending in the circuit court of the United States for the fourth circuit in and for the district of Maryland, on an appeal from the United States district court of Maryland, wherein the Flushing College Point and New York Steam Ferry Company are appellants, and the steamer Louisiana is appellee, and the said witness being by me carefully examined and cautioned and duly sworn according to law to testify the whole truth, and being examined on behalf of the appellee, makes oath, deposeth, and saith as follows, to wit:

Question. State, if you please, whether you are at present a captain of any and what steamer, and how long it is since you first became engaged as a navigator of steam vessels.

Answer. I am now acting as the captain of the steamer Georgiana, belonging to the appellee, and now in the service of the United States government; I have been twenty-eight years engaged in the business of steamboating.

164 Question. Have you any knowledge of the steamer Flushing, and do you know of her lying at any time on Hampton bar, and do you know the captain at the time of said steamer Flushing when she grounded on said bar; if yea, had he any conversation with you in relation to the grounding of said steamer? and if he had, please state all that passed in such conversation.

(This question objected to by proctor for appellant.)

Answer. I saw the steamer Flushing on Hampton bar; never knew her before she was sunk; a person who represented himself to be the captain of the Flushing came on board my steamer at the wharf at Fortress Monroe, on the day after the Flushing grounded, and inquired of me if he was lying in the buoy which marked Hampton bar; I told him he was not, as I had seen it floating away about three days before; he said he was afraid the company would find fault with him for getting aground, as he had a pilot who had not been running there for 7 or 8 years, and to whom the place was strange, because a new wharf had been built out since he, the pilot, was there; he said the pilot had followed coasting some seven or eight years; when the captain first came on board my vessel, he said it had been represented to him that he was on the buoy, and he wished to know from me if such was the fact.

165 Question. Did he name to you the person who had acted as his pilot; did he inform you whether said person had any license to act as pilot in the Chesapeake bay or elsewhere?

(Objected to by appellant's proctor.)

Answer. He did not name any person, nor did he state to me that the person who acted as pilot was a licensed pilot.

Question. You heard the several questions propounded to Captain Thomas Travers, and his several replies to the same. Be good enough to say, as a nautical man, whether the answers of Capt. Travers to those questions are in any wise different from what your answers would be if the same questions were severally propounded to you; and if in any respect or respects your answers would be different, then be good enough to state such difference fully and in detail.

Answer. I heard all his replies to all and each of the questions that were put to him, and I don't think that my answers would have differed from his.

*Cross.*

Question. Have you ever moored your steamer at the old wharf at Old Point when the wind was blowing a gale or strong breeze from the east? Say what you would call half a gale, and a flood tide running. If so, state whether you were able to remain at said wharf under such circumstances.

Answer. I have never what is technically called moored her, but
166 have fastened her with lines to the wharf; I mean by mooring, putting anchors out astern; my boat has always held there, but she is not so hard to hold as the Louisiana; she is a lighter boat, about 210 feet long and 603 tons register.

Question. Have you ever known a boat of about the same weight and length of the Louisiana moored at said wharf under the circumstances mentioned in the last question; and if so, to remain there without breaking away?

Answer. I can't answer that question; if I had been there I could tell more about it.

S. PEARSON.

And I, John Hanan, commissioner as aforesaid, do hereby certify that said deposition of Solomon Pearson was taken by consent, and I do also certify that the deponent was by me first carefully examined and cautioned, and duly sworn according to law to testify the whole truth, and that the foregoing deposition was then reduced to writing by me, and thereafter subscribed by said deponent in my presence. And I do further certify that I am not of counsel or attorney for either of the parties to said suit, and that I am not interested in the event of said cause.

Given under my hand and seal this 11th day of May, eighteen hundred and sixty-three, at the city of Baltimore, within the district of Maryland.

JOHN HANAN, [SEAL.]
*U. S. Commissioner.*

167 THE UNITED STATES OF AMERICA,
*District of Maryland, set:*

I, John Hanan, a commissioner appointed by the circuit court of the United States for the fourth circuit in and for the Maryland district, pursuant to the act of Congress entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," do hereby certify that on the 11th day of May, A. D. 1863, at my office in the city of Baltimore, within the district of Maryland, personally appeared before me Thomas Travers, a witness for the appellee, in a certain cause depending in the circuit court of the United States for the fourth circuit in the district of Maryland, in an appeal from the United States district court of Maryland, wherein the Flushing College Point and New York Steam Ferry Company are appellants, and the steamer Louisiana is appellee. And the

said witness being by me carefully examined and cautioned, and duly sworn according to law to testify the whole truth, and being examined in behalf of the appellee, makes oath, deposeth and saith, as follows, to wit:

1. Question. State, if you please, whether you have had any experience, and what, and for what length of time, in the business of sailing steamers.

Answer. I have been steamboating for upwards of fifteen years, and have commanded steamers for the last 7 or 8 years.

2. Question. Do you consider yourself competent, from your experience as a steamboat captain, to express a reliable opinion as to the proper
168 management of a steamer in case of the occurrence of an unforeseen disaster arising from the parting of a large steamer from her moorings in a habor? and state, also, in answer to this question, whether you knew the steamer Louisiana, belonging to the appellee, and also whether you are acquainted with the harbor at Fortress Monroe, and the wharves and other localities of said harbor.

Answer. I do consider myself competent to express such an opinion as is required; I knew the Louisiana very well; I have been on her many a time, and I am acquainted with the harbor, wharves, and other localities around said Fortress Monroe; I have been in the habit of sailing there for the last twenty years.

Question. If you had been in command of said steamer Louisiana whilst in said harbor, and she had been moored to the old wharf there by sufficient fastenings, in your judgment, to resist the pressure of both wind and tide, and said steamer nevertheless, contrary to your expectation, had parted her moorings and had begun to drift to the westward, and the wind and tide were acting together coming from the east, and the wind was blowing very strong, and the tide was running very high, and the steamer was drifting broadside, and vessels were riding at anchor to the south and southwest and southeast of the position in the harbor where the steamer was drifting, what expedient, in your judgment, would have been the safest and the best to be adopted as most likely to insure safety to the steamer itself
169 and to vessels lying in said harbor?

Answer. If there had been room to back my steamer without coming in contact with other vessels, I should have backed her; if not room to back safely, then, as she went adrift, I would have anchored.

Question. When you say you would have anchored, do you desire to be understood to mean that you would have cast anchor, or for any other and what purpose?

Answer. If I had intended to have remained there for any length of time, six or twelve hours, riding to the anchor, I would have dropped the starboard anchor, because it was the larger; and as the case was put to me, the wind and tide were acting together and the pressure very heavy.

Question. If you had deemed it expedient to rely upon the power of steam for the purpose of extricating the steamer from the position supposed in the question, would you then have dropped the starboard anchor or not; and if not, what would you have done?

Answer. If I had intended to rely on the power of steam, I would have let go my port anchor, which is the lever in the case supposed; my reasons are these, from the state of the whole case as presented to me from the question, that by letting go the lee anchor I would have brought the steamer's head to the wind and tide sooner than by the weather or starboard anchor, which would then have enabled me to manage the steamer by the use of steam.

Question. Are there any other reasons which would have induced
170 you, in the case supposed, to drop the lee anchor in preference to the starboard anchor? If there be any, please state them?

Answer. By the use of the lee anchor dropped from the bow, the effect would be that the stern went swinging round and the bow be brought to head to wind and tide; if the anchor had been dropped from an after part of the steamer instead of being dropped from the bow, the leverage would not have been the same, and would not have had the same effect of turning the head of the steamer to wind and tide; if the lee anchor had been dropped aft as the vessel was drifting broadside, the effect would have been that the whole pressure of the boat would have been upon the chain, and the chain would have no effect in turning the head of the steamer, and the steamer would have passed over the chain.

Question. From your knowledge of the steamer Louisiana and the position of the cat-heads on the port side, supposing the port anchor was suspended from the cat-head and sufficient length of chain had been paid out to enable the anchor to reach the bottom, and there had been no sudden squall to interfere with the ordinary result of dropping the anchor, would or could the chain of said anchor have got under the bottom of said steamer, or with what part of said steamer would or ought the chain to have come in contact?

Answer. The chain would have come in contact with the lee fore-
171 foot of the steamer, otherwise called the stern. There is but one way that the chain could be brought under the bottom, and that is by the steamer making headway; and that under the circumstances was not to be presumed, as there was no room to go ahead.

Question. Have you any recollection of having seen the steamer Flushing lying on the bar at Hampton Roads? If yea, state, if you please, how long she lay there, and what were her position and condition.

Answer. I saw her lying there many a time as I passed in and out of the roads in command of the steamer Peabody, belonging to the Powhatan Steamboat Company. I don't know how long she laid there, but I am satisfied I saw her there two or three months. The bow of her was all under water and her stern above water. I never examined her; from seeing her lying there so long, I supposed she had been given up as a wreck.

*Cross.*

Question. Please state whether you mean to say that at no point between the old wharf and where the Flushing lay, and no matter how far from the shore the Louisiana was when she supposed, in the question addressed to you in chief, to have dropped anchor, that there was no room for the Louisisiana to have gone ahead. And if you do not mean to say this, please state where you supposed the Louisiana to be in said harbor when you say it was impossible for her to go ahead.

Answer. No, sir; I don't mean to say there was no room; she was a
172 long distance out from the I took as the locality of the harbor, and *and* where the Flushing lay, I suppose that she ought to have been anchored at about half way between the old wharf and where the Flushing lay. When I say anchored; I mean letting go an anchor; and whether she had room enough to go ahead, casting anchor at that point, depends upon how far she was then from the shore; as to which, not having been there, I can say nothing.

*Direct.*

Question. State, if you please, whether, in your judgment, in the case supposed in questions heretofore propounded to you of the said steamer drifting broadside under the combined pressure of the wind and tide, you would have deemed it the safest course to adopt the experiment of riding to

an anchor or of turning the head of the steamer to wind and tide, and to use the power of steam.

Answer. I would have dropped my anchor, if I had been there, with a view to bring the head of the steamer to the wind and tide, and would have relied on the steam of the vessel to have extricated her.

*Cross.*

Question. Would not your resorting to reliance upon your steam depend upon your having a sufficient quantity to work said vessel at ease and at your will?

Answer. I would, of course.

THOMAS TRAVERS.

173 And I, John Hanan, commissioner as aforesaid, do hereby certify that said deposition of Thomas Travers was taken by consent. And I do also certify that the deponent was by me first carefully examined, cautioned, and duly sworn, according to law, to testify the whole truth; and that the foregoing deposition was then reduced to writing by me, and thereafter subscribed by said deponent in my presence. And I do further certify that I am not of counsel or attorney for either of the parties to said suit, and that I am not interested in the event of said cause.

Given under my hand and seal, at the city of Baltimore, within the district of Maryland, this 11th day of May, in the year of our Lord eighteen hundred and sixty-three.

JOHN HANAN, *United States Comm'r.*

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175 THE UNITED STATES OF AMERICA, *District of Maryland, to wit:*

I, John Hanan, a commissioner appointed by the circuit court of the United States for the fourth circuit, in and for the Maryland district, pursuant to an act of Congress entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," do hereby certify that on the 13th day of May, in the year of our Lord eighteen hundred and sixty-three, at my office in the city of Baltimore, within the district of Maryland, personally appeared Samuel Horney, a witness for the appellee in a certain civil cause depending in the circuit court of the United States for the Maryland district, on an appeal from the United States district court of Maryland, wherein the Flushing College Point and New York Steam Ferry Company is appellant, and the steamer Louisiana is appellee. And the said witness being by me carefully examined and cautioned, and duly sworn, according to law, to testify the whole truth, and being examined in behalf of the appellee, deposes and says as follows, to wit:

Question. State, if you please, whether you were connected with the steamer Louisiana in any way, and in what capacity, in the month of June, 1862?

Answer. I was chief engineer of her and had an assistant; he was 2d engineer.

Question. For what length of time have you acted as engineer on board steamboats?

176 Answer. About 35 years; about 30 years I have been acting as chief engineer.

Question. State, if you please, whether you were on board of the Louisiana in your capacity as engineer on the 8th of June, 1862, when said steamer was fastened to the old wharf at Fortress Monroe; and if so, state, if you please, whether, whilst she was so lying at that said wharf, there was or was not any head of steam in the boilers of said steamer?

Answer. I was on board in the capacity of engineer, and had charge of the engine rooms at that time. We had steam on the boiler sufficient to work her any way that they wanted her to work; I mean either backwards or forwards, not sideways.

Question. When lying at a wharf is it usual, or is it safe, to keep up a full head of steam?

Answer. No, sir; it is not usual; I don't know about its being safe. If a man attends to his business it is safe to keep as much steam when lying at the wharf as when running, so far as concerns explosion.

Question. Had you, in your judgment, at the time you were so lying at said wharf, a sufficient head of steam to enable you to obey any order that might have been given?

177 Answer. Plenty.

Question. When said steamer broke loose from her fastenings did you receive any, and what, orders as to working the engine, and did you obey such orders, and had you sufficient steam or not for the purpose?

Answer. I received orders by the bell to back her, I think; I am not positive which it was, to go ahead or back. The engine was worked according to the bell; when she was rung she was answered immediately. We had sufficient steam.

Question. Was any subsequent order given; and if so, what was it, and was it obeyed or not?

Answer. The bells were rung frequently to go ahead, to back, and to stop, and they were answered until we got into the Flushing.

Question. After you came in contact with the Flushing were any orders then given; and if yea, were they obeyed or not; and if not, why not?

Answer. The bell was rung to go ahead, and I gave steam to the engine to put her in that motion, and she refused to obey. Then one of the firemen ran in and informed me that the Flushing's stern had gone under the guard and got afoul of our wheel, and I at once sent word that I could not move the engine, that the Flushing was afoul of our wheel.

178 Question. After the Louisiana was made loose from the Flushing was she then propelled by steam in her further movements?

Answer. After the tug-boat had pulled us off from the Flushing, the bell rung to go ahead, and we did go ahead till she made her anchorage.

*Cross-examination.*

Question. Did you add fuel to your fires when you learned the moorings of the steamer had parted?

Answer. When lying at the wharf it was customary for us to leave our doors open to keep steam from making. We had new fires directly the bell rung and the doors were closed; steam began to make rapidly. At the same time I put the engine in the backward motion. I don't rightly know the time the doors had been open, perhaps an hour, or it might have been only half an hour. It was customary to keep our fires in good order; especially while in the service.

Question. How long before the breaking away had you made up your fires?

Answer. In the morning before we left the anchorage we cleared up our fires, and we came into the wharf with new fires.

179 Question. What part of the Louisiana did the tugs fasten to, and did they put your head to wind and tide, or did your engines do that?

Answer. I am not able to say to what part of the Louisiana the tugs fastened; my business kept me in the engine-room. When the bell was rung to go ahead I went ahead. I don't know whether the tugs pulled us round or not.

Question. What was the first motion of the Louisiana, forward or backward, after you sent word that your engines would not work?

Answer. I don't remember.

*R.-ex.*

Question. State, if you please, whether Capt. Porter left the Louisiana at any and what time during the day of 8th June, 1862, whilst the steamer was lying at the wharf; and if so, had he any conversation with you, at about the time of his leaving, in relation to the condition of your steam; if yea, state it.

Answer. I can't tell what time Capt. Porter left; before he went ashore he came to me and asked if I had steam, and I told him I had plenty. He then said, keep steam on. He remarked at the time that he thought the fastenings would hold as long as the wharf would. I had as much steam as I usually run with, and I kept it up.

SAMUEL HORNEY.

180 And I, John Hanan, a commissioner as aforesaid, do hereby certify that the aforegoing deposition of Samuel Horney was taken by consent. And I do also certify that the deponent was by me first carefully examined and cautioned, and duly sworn, according to law, to testify the whole truth, and that the foregoing deposition was reduced to writing in presence of said deponent, and thereafter subscribed by him in my presence. And I do further certify that I am not of counsel or attorney for either of the parties to the said cause, and that I am not interested in the event thereof. And I also certify that before the taking of the deposition of Samuel Horney, William F. Porter, and A. K. Cralle, it was agreed by the proctors for the appellant and appellee than the said depositions should be taken as if releases had actually been made to said deponents.

Given under my hand and seal, at the city of Baltimore, in the district of Maryland, this thirteenth day of May, A. D. 1863.

JOHN HANAN, *U. S. Commissioner for Md.*

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182 Circuit court of the U. States, April term, 1863.

THE FLUSHING COLLEGE POINT AND NEW YORK STEAM FERRY COMPANY
*vs.*
THE STEAMER LOUISIANA.

This case standing ready for hearing, and having been argued by counsel, and the record and proceedings therein read and considered by the court, it is thereupon adjudged and decreed this eighth day of June, 1863, that the decree of the district court be, and the same is hereby, reversed, and the papers and proceedings in the case referred to Andrew S. Ridgely, a commissioner of this court, to state the amount of the damage sustained by the appellant from the collision with the Louisiana, according to the testimony already taken, and such further testimony as either party may offer, after giving reasonable notice to the counsel for the respective parties, and report the same to the court on or before Thursday, the 11th inst., each party to be at liberty to except to such account or any item or items in it.

R. B. TANEY.

In the circuit court of the U. S. for Maryland district, on appeal from the district court.

THE FLUSHING COLLEGE POINT AND NEW YORK STEAM FERRY COMPANY
*vs.*
THE STEAMER LOUISIANA.

To the honorable R. B. Taney, chief justice and judge of the circuit court of the United States for the district of Maryland:

The libellant humbly prays leave to amend its libel in this cause,
183 so that the said libel shall claim to recover the sum of three thousand dollars for the damages sustained by the steamboat Flushing by the collision with the Louisiana in said libel mentioned, instead and in the place of the sum of two thousand dollars, as claimed in the said libel, as it now stands. And the libellant respectfully states, as the ground of this its application, that, at the time of filing its said libel, it was not aware that the cost of repairing said damages would exceed the sum of two thousand dollars.

All of which is respectfully submitted.

J. M. CAMPBELL,
BERNARD CARTER,
*Proctors for Libellant.*

Circuit court of the United States, fourth circuit and Maryland district.

FLUSHING COLLEGE POINT AND NEW YORK STEAM FERRY COMPANY
*vs.*
STEAMER LOUISIANA.

The report of the commissioner to whom the papers and proceedings in the above-entitled cause were referred, to state the amount of damages sustained by the appellant from the collision with the said steamer Louisiana, respectfully states, that, after due notice to the proctors of the respective parties, who declined offering any additional testimony, he has examined the prayers and evidence in said cause, and finds that the appellant's steamer, Flushing, got aground in Hampton Roads harbor on the 28th March, 1862, and so remained until the 8th of June following, when the collision
184 in question occurred. She was subsequently raised on the 8th of August, 1862, and sent to New York for repairs. Before the grounding of said steamer it appears, from the evidence in the cause, that she was in good order and preservation, and said repairs were rendered necessary by the two-fold cause of her getting aground and the collision. The whole costs of repairs which was found necessary, from the above causes, to put upon her, amounted to the sum of $7,300.

The chief damage to the said steamer appears to have been occasioned by the sinking of her bow consequent upon her getting aground; her stern, however, and wheel-houses were not submerged; and it was here that the damage occasioned by the collision occurred. Captain Nim no testified, on page 86 of the deposition returned from New York, that the after part of the steamer Flushing was the whole time above water prior to the collision, but of water, and *and* that he could work on that [illegible] was uninjured, with the exception of three panels on the [illegible] which cost more, when new, $5; these were damaged one day by an extraordinary high tide. He further testifies, in page 65, that the damage sustained by the collision, comprising the breaking up of the ground [illegible] the stern, and also the starboard

quarter for about half way from the stern to the wheels, the breaking up of the knees under the deck beams, the breaking up of the guard braces and knees themselves, with the rails and stanchions; and your commissioner estimates and reports these damages as amounting to the sum of $2, 705.

| | |
|---|---|
| For ships' carpenters' work, (see testimony of Samuel Curtis, N. T., dep's, p. 54) at the sum of | 1, 000 00 |
| 185 For joiners' work, (see dep's of Joshua Youngs, p. 59,) at the sum of | 1, 500 00 |
| For painters' work, (see dep's of Richard Saunders, p. 90,) at the sum of | 220 00 |
| Total | 2, 720 00 |
| From this amount, $2,720, your commissioner would deduct the damage done to the three panels by the extraordinary high tide alluded to by Capt. Nimmo in his dep., p. 86, as above referred to, but has no connecting data by which that damage can be ascertained. It would not, however, exceed $15—the entire cost of the panels when new—deducting therefrom the said sum of | 15 00 |
| From the above amount of $2,720, it leaves the damage to the said steamer Flushing, as found from the evidence and herewith reported by your commissioner, as amounting to the sum of | 2, 705 00 |

Your commissioner, however, further reports that, on examining the reports of the complainants, he finds that the damage claimed by said complainant amounts only to the sum of $2,000, or $705 less than the real damage which he supposes to have in the premises sustained.

All of which is respectfully submitted.

ANDW. STERETT RIDGELEY, *Commissioner.*

186 In the circuit court of the U. S. for Maryland district, on appeal from district court.

THE FLUSHING COLLEGE POINT AND NEW YORK STEAM FERRY CO. *vs.* THE STEAMER LOUISIANA.

This cause having been, by the decree of this court passed on the 8th June, 1863, referred to a commissioner of this court, with directions to ascertain the amount of the damages sustained by the libellant from the collision with the Louisiana, in said proceedings mentioned; and the said commissioner having in the mean time filed his report in this cause under said order, and the said report having been considered by the court, and no exceptions filed thereto:

And the libellant having, with leave of court, amended its libel so as to claim the sum of three thousand dollars in the place of two thousand dollars, as originally claimed in said libel:

Now it is, the 15th day of June, 1863, by the circuit court of the United States for the Maryland district, adjudged, ordered, and decreed, that the libellant recover herein the sum of twenty-seven hundred and five dollars, each party to pay its own costs in this court and the court below. And it appearing to the court that the said steamer Louisiana was delivered to the Baltimore Steam Packet Company, claimant of said steamer Louisiana, on the stipulation of said Baltimore Steam Packet Company, it is therefore

further ordered, adjudged, and decreed that the said claimant and stipulator pay to the said libellant the said sum of twenty-seven hundred and five dollars.

R. B. TANEY.

187 Know all men by these presents, that we, the Baltimore Steam Packet Company and James McConkey and George R. Vickers, of the city of Baltimore, in the State of Maryland, are held and firmly bound unto the Flushing College Point and New York Steam Ferry Company, in the just and full sum of five thousand five hundred dollars, lawful money of the United States, to be paid to the said Flushing College Point and New York Steam Ferry Company, its certain attorney, successors, or assigns, to which payment well and truly to be made and done we hereby bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated this sixteenth day of June, in the year of our Lord one thousand eight hundred and sixty-three.

Whereas, at a district court of the United States in and for the Maryland district, begun and held at the city of Baltimore, on the first Tuesday in December, in the year of our Lord one thousand eight hundred and sixty-two, it was adjudged, ordered, and decreed that the libel in this cause be, and the same is hereby, dismissed, each of the parties to pay their own costs; from which said decree, so as aforesaid passed, the said Flushing College Point and New York Steam Ferry Company, owner of the steamboat Flushing, prayed an appeal to the circuit court of the United States for
188 the fourth circuit, in and for the Maryland district, to be held at the city of Baltimore on the first Monday in April next:

And whereas, at a circuit court of the United States for the fourth circuit, in and for the Maryland district, begun and held at the city of Baltimore, on the first Monday in April, in the year of our Lord one thousand eight hundred and sixty-three, the decree of the said district court was reversed; and it was adjudged, ordered, and decreed that the libellant recover herein the sum of two thousand seven hundred and five dollars, each party to pay its own costs in that court and the court below; from which said decree, so as aforesaid passed, the said Baltimore Steam Packet Company, owner of the steamer Louisiana, hath prayed an appeal to the Supreme Court of the United States, to be held at the city of Washington, on the first Monday in December next:

Now the condition of the foregoing obligation is such, that if the said Baltimore Steam Packet Company, owner of the steamer Louisiana, shall well and truly prosecute with effect its said appeal, and pay unto the said Flushing College Point and New York Steam Ferry Company, its attorney, successors, or assigns, the amount of the decree aforesaid of the said circuit court aforesaid, and all such damages, costs, and charges as may be awarded unto it by the said Supreme Court, in case the said appellant shall fail to make good its said appeal, then the above obligation to be
189 void and of none effect; otherwise to be and remain in full force and virtue in law.

M. N. FALLS, [SEAL.]
*Pres. B. S. P. Co.*
JAS. McCONKEY. [SEAL.]
G. R. VICKERS. [SEAL.]

Signed, sealed, and delivered in presence of—
W. BALL.

Bond approved June 26, 1863.

WILLIAM F. GILES.

In testimony that the aforegoing is a true copy, taken from the record and proceedings of the circuit court aforesaid, I hereunto subscribe [SEAL.] my name and affix the seal of the said circuit court this twenty-fifth day of November, in the year of our Lord one thousand eight hundred and sixty-three.

THOS. SPICER, *Clk Circ't Court.*

Filed December 8, 1863.

# SUPREME COURT OF THE UNITED STATES.

THE BALTIMORE STEAM PACKET COMPANY,

*vs.*

THE FLUSHING COLLEGE POINT AND NEW YORK STEAM FERRY COMPANY.

*Appeal from a Decree of the Circuit Court of the United States, for the Fourth Circuit, in and for the District of Maryland.*

20 Eng. L. & Eq. 699

IN THE

# Supreme Court of the United States.

THE BALTIMORE STEAM PACKET COMPANY,

*vs.*

THE FLUSHING COLLEGE POINT AND NEW YORK STEAM FERRY COMPANY.

***Appeal from a Decree of the Circuit Court of the United States, for the Fourth Circuit, in and for the District of Maryland.***

## STATEMENT AND POINTS OF APPELLANT.

The Appellee filed its Libel in the District Court of Maryland, against the Appellant, claiming damages for injuries sustained by the Steamboat Flushing, the property of the Appellee, from a collision between said Steamboat and the Steamer Louisiana. The case was heard before the District Judge, who dismissed the Libel. From that Decree the now Appellee appealed to the Circuit Court of the United States for the Fourth Circuit and District of Maryland; and the late Chief Justice of the United States reversed the decision of the District Judge, and passed a final Decree in favor of the Appellee for the sum of two thousand seven hundred and five dollars; each party to pay its own costs in both Courts. From the last mentioned Decree, this appeal has been prosecuted.

The Libel will be found at page 2 of the record, and articulately propounds, as follows:

1. That on the eighth of July, 1862, the Steamboat Flushing was lying, partly sunk, on Hampton Bar, in Hampton Roads in the Chesapeake Bay, near Fortress Monroe, entirely clear of the channel, and was being operated upon by men, employed to raise her.

2. That the Steamer Louisiana arrived, on said day, in Hampton Roads, and was moored to a wharf at Fortress Monroe; that about three o'clock P. M. of said day, said Steamer parted her said moorings; and, under a heavy wind, from the north east, drifted up the said Roads, broadside, against and across the stern of the Flushing, and destroyed her cabin, &c.

3. That the breaking away from her moorings and drifting of the Louisiana, and her collision with the Flushing, were the result of gross carelessness and mismanagement on the part of the officers and crew of said Steamer and those having charge of her, on the day when the collision took place.

4. That the Lousiana was not properly or securely moored to said wharf; and broke away, because of the insufficiency and inadequacy of her said moorings.

5. That those in charge of the Louisiana, negligently allowed the steam, in her boiler, to get so low, that, when she so parted her moorings, the engineer could not control her motions; and that she drifted at the mercy of the waves; and that if her engine and motive power had been in proper order, she could readily have been kept clear of the Flushing.

6. That it was impossible for the Flushing to get out of the way.

The answer to the Libel will be found at page 4 of the record.

The following synopsis will show the contents of the answer:

1. That the Flushing was derelict, forsaken, and abandoned, lying partly sunken, on Hampton Bar, in a very dangerous and improper position, in the highway of vessels, there navigating; and had been so lying, for more than six weeks before the collision, with no person on board: and the answer propounds that she was an existing public nuisance.

2. That the Louisiana, at the time, was in the service of the Government of the United States, under a charter; by which the Government was bound to coal the vessel; and that, in obedience to orders, emanating from the Government, and given by competent authority, the Louisiana proceeded to said wharf, for the purpose of there taking in coal; that said wharf was not selected by the master of the Louisiana, as her berth; but was prescribed to him, as the wharf, at which said Steamer was to lie, for the purpose of coaling.

3. That the said wharf was of such narrow front, that it was not possible for the Louisiana, because of her length, to lay flush alongside of said wharf; and that, for that reason, uncommon pains were taken to fasten her securely, as a strong, stiff, East wind was blowing at the time, and a strong tide, some time after

the Louisiana had arrived at said wharf, had set in from the East; that she was accordingly fastened, by four new cables, one of them a seven inches cable, and the three others, each, eight and a half inches cables.

4. That the wind, which had, previously, been violent, suddenly greatly increased in fury, and, acting upon the waters of the tide, increased the size and momentum of the waves; and that the combined action of the winds and waves upon the hull of the Louisiana, forced her stern from its position, the stern cable giving way under the pressure; and the stern being thus violently driven round, the steamer was forced from her moorings, the cleets, by which the Steamer was attached to her cables, in front, giving way; and thus the Steamer, until her engine could be put in motion, was left completely at the mercy of the winds and waves.

5. That there was sufficient steam in the boiler; and that, in obedience to signals to back, the Louisiana was backed sufficiently to run out the anchor; and that, for a brief space, the Steamer held to her anchor; but that the fury of the storm produced so great a strain, that the chain of the anchor parted, and the Steamer was again free of the control of any fastenings.

6. That there was no negligence, or want of care, and no want of exertion on the part of those in charge of the Louisiana, and that the collision was the result of inevitable accident.

The cause was decided, by the District Judge, on oral testimony. It was heard by the Chief Justice on appeal, upon the written testimony embodied in the record.

Before the passage of the final Decree, on the Appeal, the Libellant, on motion, enlarged his claim from two thousand dollars, the amount originally claimed, to three thousand dollars; and the Decree was in favor of the Libellant, for two thousand seven hundred and five dollars; each party to pay its own costs, in both Courts.

The Appellant does not propose to raise any question as to the *amount* of the Decree. It is not supposed that this Court would entertain such an objection, as a ground of reversal, if, in other respects, the Decree shall be considered correct.

The Appellant assumes the position that no Decree should have been made against it, for any amount whatever.

The evidence, therefore, in relation to the costs of repairs of the Flushing, &c., need not be noticed. The other evidence will be shortly stated.

There are two wharves at Fortress Monroe: the Government wharf, at which the Louisiana was moored, generally called the "old wharf," and the Baltimore wharf, commonly called the "new wharf," belonging to and ordinarily used by the Appellant. The chart used, by agreement, for illustration, shows the relative position of these wharves.

The "old wharf" is built in the form of a T, and its outer end is about eighty-two feet in width. It faces the open sea, looking nearly towards Cape Henry. Vessels cannot lie at its side; they can only be moored at the front. The tide is very swift around the wharf, and curves in. This wharf belonged to the United States.

The "new wharf" is one hundred and fifty feet front; lies about seventeen hundred feet Westerly of the "old wharf," and is much less exposed to the winds and waves. (Evidence of Mr. Ely, page 51.)

Hampton Bar lies about two hundred and fifty yards Westerly of the "new wharf." (Same witness.)

Between the "old wharf" and the "new wharf" there is a beach, or knoll of sand, which makes out; (evidence of Captain Cralle, pages 54 and 55, and of Ely, page 51;) and between the "new wharf" and the Hampton Bar there are opposing currents, which render it almost impossible for a vessel, drifting, to make the inner harbor or hole.

At the time of the collision, the Louisiana was in the service of the Government of the United States, as a transport, and, by the terms of the charter, the Government was to furnish the fuel. (Charter Party, page 48.) The Government had provided a supply of coal at Fortress Monroe, at the "old wharf." The coal yard was about twenty yards from the end of that wharf. They had no coal at the new wharf. (Evidence of Captain Porter, page 35.)

The Louisiana left the White House, on York River, on the seventh of June, laden with wounded and sick soldiers, and reached Old Point at a late hour the same evening, and laid in the stream until next day, when, by order of the Quartermaster, she proceeded to the "old wharf," for the double purpose of taking in coal, and of landing such of the soldiers as were too sick to be carried to Philadelphia, and of taking in other soldiers in their place. (Evidence of Captain Porter, page 34.)

The orders were to lay at that wharf until further orders, and no order to change was given. Two gangways were constructed forward, one to take in coal, the other to land the sick soldiers. From the narrowness of the wharf, it was impossible to use the after gangway (Evidence of Captain Cralle, page 54.)

The Louisiana was two hundred and seventy-five feet in length. (Evidence of Captain Porter, page 35.)

The Flushing grounded on Hampton Bar on the twenty-eighth of March, 1862. She also was in the Government service. (Evidence of Nimmo, page 26; he was the captain of the Flushing.) The Flushing had, therefore, lain there seventy-two days before the collision. She was not raised until the eighth of August, or one hundred and thirty-three days after she grounded, and was then *raised* by *the wreck masters*, (Evidence of Nimmo, page 26,) by means of hydraulic power. (Evidence of Britt, page 20.) There is no satisfactory explanation given for the delay in raising her. It is true that Captain Nimmo says, "*Every possible effort*" was made to raise her; but he does not tell what efforts were made. It is not shown at what time the wreck masters were employed. There is nothing to show that, if proper means had been employed, it would have taken even a week to raise her.

Captain Travers, an old steamboat captain, regularly passing in and out of the Roads, in command of the Steamer Peabody, of the Powhatan Steamboat Company, (a witness wholly unconnected with this controversy) says, that he saw the Flushing lying there, two or three months; and supposed that she had been given up as a wreck.

(Page 65.) Captain Porter says that the Flushing might have been raised some two or three months earlier, if proper exertions had been made. His duties carried him to the Roads every other day, and he says, that for fully two months, no efforts were made to raise her. (Evidence of Porter, page 37.)

At the time the Louisiana arrived at the "old wharf," the tide was setting out, (that is, from the West) pretty strong, (Porter's evidence, page 34 ) The Steamer was fastened to posts on shore, which were driven into the ground, and bolted to the wharf. At the stern of the boat there were four fasts, and forward five fasts of line; seven of these were nine inch new lines, and the other two were seven and a half inches. (Porter's evidence, page 35.) At first, there were but three lines out; one at the stern, and two forward. Afterwards, (when the tide changed, and the wind increased) there were additional lines put out; so that five lines were forward, and four aft; and the bights of these lines, going over the same posts, in effect doubled their number, and the slack of them was hauled in, so that the strain might bear on all alike. (Cralle's evidence, page 53.) Captain Porter was compelled to go on shore to visit the surgeons, in relation to the sick: he left about half past twelve. At that time, the weather was blowing strongly from the Eastward from the Capes, and the tide was about to turn,

and would then come in with the wind from the sea. Before he went, he ascertained that the Engineer had sufficient steam to work the boat. He conferred with his two Mates, and they all thought that she was sufficiently fastened. (Porter's evidence, page 35.) There was no room in the cleets for all the lines, and one was fastened to the capstern. (Cralle's evidence, 53.)

The Appellant, in support of this appeal, will maintain the following points:

1. There was no fault, on the part of the Louisiana, in going to the "old wharf;" although it is conceded that the "new wharf" would have been a safer berth for this large steamer.

(1.) The Louisiana was in the service of the Government; and, by her charter, was bound to proceed to any place to which she was ordered. By the charter, the Government was to furnish the coal, and the Louisiana was to proceed to any place, where ordered to go, by any Quartermaster.

She was ordered, by Quartermaster Talmadge, to proceed to this wharf, and to remain there until further orders; and she was *bound* to go thither, and remain there. Obedience to the order, whether the particular order was right or wrong, was a *duty*. Refusal to obey would have been mutinous.

Hodkinson *vs.* Fernie, 2 C. B. Rep. N. S.
(2 J. Scott N. S.) 418, 426. S. C. 89 Engl.
C. L. Rep. 417, 425.

(2.) It is not propounded, in the allegations of the Libel, as a fault, that the Louisiana proceeded to this wharf.

There are but two complaints, *Firstly*, alleged want of proper fastenings to the wharf; *Secondly*, neglect in not keeping sufficient steam in the boiler. The general imputation of negligence, found in the third article of the Libel, is made specific, and definite, by the allegations of the fourth and fifth articles. These allegations were expressly denied by the answer; and the issues, as to alleged negligence, were therefore confined to these two allegations.

McKinley *vs.* Morrish, 21 Howard's Reports, 346.

2. There was no fault in the measures adopted and pursued, after the Louisiana arrived at the "old wharf."

The tide was ebb, when the Louisiana arrived at the wharf; and she was properly placed with her bow to the Westward, facing the tide. The Steamer's length was two hundred and seventy-five feet; the front of the wharf but eighty-two feet. Less than one-third of the length of the vessel, therefore, could be placed in juxta-position with the wharf; and, as soldiers were to be landed,

and coal to be taken in, at the same time, it was necessary to have two gangways in operation, at the same time; and, as the after gangway could not be used, in consequence of the narrowness of the front of the wharf, both gangways were rigged forward.

Expedition was a duty. It was a time of war. Now it is not pretended that sufficient fastenings were not made forward. No more ropes could be passed through the cleets, and therefore the capstern also was used; and to show the sufficiency and strength of the fastenings forward, the facts are shown, that the cables forward did not part; that the cleets gave way, and the capstern was broken. But it was suggested below, that when the wind increased, and the tide changed, something more should have been done. It is clearly proved that additional lines were put out, when the wind increased and the tide changed. But it was also suggested, that the Steamer should have changed her position, and have placed her larboard side next to the wharf; and that she ought to have placed her bow towards the East, facing the wind and tide. It must be remembered, however, that the Libel does not propound, as a fault, the omission to make this manœuvre, and the evidence shows, that it would have been in violation of orders, and would, moreover, have been a rash and perilous adventure. The objection, therefore, is limited to the alleged insufficiency of the fastenings from the stern of the boat to the wharf. Now the evidence shows (Captain Cralle's evidence, page 53) that, when they first laid at the wharf, they had three lines out; one at the stern, and two forward. Subsequently, the two forward were increased to five; and the one aft was increased to four; and the bights of those lines went over the same posts, which, in effect, doubled the number. Well might Captain Cralle say, (in accounting for the effect of the storm) something was bound to give way—"boat, wharf, and all." Captain Porter says to the same effect, page 41.

When it is recollected that the stern of the boat was, necessarily, one hundred and fifty feet. or more, distant from the nearest point of the wharf; and that the office of those stern lines was merely to steady the boat, in her position; and not, as holdings, to fasten her to the wharf; it will be readily apprehended, how a sudden increase of the wind would increase the violence of the waves, lift up the stern of the vessel, slacken the stern fastenings, and enable the storm to get hold of the boat, and cause the lines to snap, the wharf to give way, or the vessel to be torn asunder. To consider the result as evidence of neglect, would destroy the notion of inevitable accident, and would make the owners responsible for the fury of the storm, and the perils of the sea.

The language of Chief Justice Taney, in the case of the owners of the Brig James Gray against the owners of the Ship John Fraser, 21 Howard's Reports, page 194, well and properly, apply to this case, and which language is here quoted: "The mere fact that one vessel strikes and damages another does not, of itself, make her liable for the injury. The collision must, in some degree, be occasioned by her fault. A ship, properly secured, may, by the violence of a storm, be driven from her moorings, and be forced against another vessel, in spite of her efforts to avoid it. Yet she certainly would not be liable for damages, which it was not in her power to prevent"

So in Steinback *vs.* Rae, 14 Howard's Reports, page 538, the learned Judge who delivered the opinion of the Court, in that case, said, "We are of opinion, therefore, that the collision was the result of an inevitable accident, arising out of the perils of navigation; and, in judgment of law, is not attributable to the fault of either party." In the recent case of the Morning Light, Mr. Justice Clifford announces and applies the same rule, 2 Wallace, 557.

And the mere facts of the occurrence of a collision and damage, are not sufficient to charge the vessel, proceeded against, with responsibility. In the case of the Ligo, 2 Hagg. 360, (7 Admiralty Reports, 360, opinion of Sir C. Robinson) it is said, "The law requires that there should be preponderating evidence to fix the loss on the party charged, before the Court can adjudge him to make compensation."

And in the case of the Bolina, 3rd notes of cases, 203, (in 5 English Admiralty Reports, 208) Dr. Lushington decided, that where there is no *prima facie* evidence of negligence and want of seamanship, the *onus* does not necessarily attach to the party proceeded against, alleging inevitable accident, to prove it; but, on the party, seeking indemnification, to prove that blame attaches to the other party.

Applying these just rules to the case of the Louisiana, the mere fact of breaking away from the "old wharf" is no sufficient evidence of fault.

3. The libel charges that the steam in the boiler was permitted to get so low, that when the Steamer broke from her moorings, the Engineer could not control her motions or course.

The evidence of Captain Cralle (pages 54 and 55) shows, that Mr. Horney, the Engineer, was a most reliable man, and he further proves, that she had steam in her boiler, as his orders to back and stop were promptly obeyed Captain Porter, before he went

ashore, satisfied himself that there was sufficient steam to work the boat, (page 35) and Mr. Horney expressly proves, (page 67,) that he had sufficient steam in the boiler, and that orders, as given, were promptly obeyed.

In point of fact, therefore, this allegation is wholly untrue; and there is no conflicting evidence on which to raise any question.

4. In the examination of witnesses, and in the argument, theories were suggested, that seamanship required Captain Cralle, to change his position at the wharf when the tide changed· that is, to liberate the steamer from her fastenings, and to go out into Hampton Roads, and come back to the wharf, and lay her bow to the Eastward, facing the wind and tide. This suggestion was sufficiently considered under the first point. If, in the effort to change the position of the Steamer, Captain Cralle had been caught by a sudden squall, he would have been without excuse. He *thought* that she was securely fastened; and if he had changed his position, he would have done wrong. It would then have been said, that he would have done right if he had remained at the wharf, and that if, in remaining there, he had been driven from its moorings, it would have been a case of inevitable accident.

The case of the Juliet Erskine, 6 Notes of Cases, 634. (5 English Admiralty Reports) would have been quoted, where Dr. Lushington says "Where a collision takes place, when every prudent measure, consistent with ordinary seamanship, has been adopted, and carried into effect by the vessel proceeded against," it is a case of inevitable accident. The case in 21 Howard's Reports, 194, already referred to, would have been quoted; and, also, the case of Steinback *vs.* Rae, 14th Howard's Reports, 538, to show that Captain Cralle, (in case he had made such experiment) would have abandoned a sure protection, and would have undertaken an unwise and dangerous and improper experiment.

5. But it was said below that the Steamer was not properly managed after she broke loose. Even if this had been the case, great allowance should be made for any seeming errors, if such appeared, and the remarks in the case of the Genessee Chief, 12 Howard's Reports, 461, would properly apply. If an error had been committed, it would not, under the circumstances, have been a fault But, to those familiar with the localities, his conduct was, in a high degree, judicious, and his orders precisely such as were necessary. When the Steamer broke loose, she was drifting sideways and Westward, her bows towards the beach. Unless backed she would have grounded on the knoll; and, even if she had escaped the knoll, she would have come into collision with the

vessels at the "new wharf." She was, therefore, properly backed, and escaped both. There was no room to work her, unless her bow could be brought to face the wind and tide, both of which were from the East. He cast an anchor—not for the purpose of riding to the anchor—but to produce the effect of changing the position of the Steamer. Captain Travers says that this was the right manœuvre; and Captain Pearson (page 63) concurs in his opinion Independently, however, of this exculpatory proof, no allegation is found in the Libel propounding this as a fault, and there is no inculpatory proof.

6. But, it is said the chain gave way; and the argument below was, and may be urged here, that the chain was not sufficient, and that the large anchor ought to have been used; indeed, both anchors. The answer is, that it was not intended to ride to the anchor, but to rely on the power of steam, and, if both anchors had been dropped, it would have been necessary to slip both, and to proceed out into the bay without any anchor, or to have spent much time in weighing even one of them But a further answer is, that if the chain was defective, it was not the fault of Captain Cralle: and no allegation of unseaworthiness of the Steamer, in any particular, is charged in the Libel.

7. Finally, in defence, the allegations of the Libel were, in terms, that the breaking away of the Louisiana, and her drifting and collision with the Flushing, were the result of gross carelessness and mismanagement on the *part* of *the officers* and crew, and of those having charge of her, *on the day* when the collision with the Flushing took place. There is no imputation of want of seaworthiness in any respect; no charge of incompetency of the officers or crew; but the charge is restricted to the alleged *carelessness* of the officers and crew, on the day of the collision. It has been shown, it is believed, that there is no basis to support this charge.

8. The Appellant will respectfully maintain in argument, that the Libellant is not entitled to any redress. Whilst it is conceded that the evidence does not sustain the position, taken in the answer, that the Flushing was derelict or abandoned; yet the evidence does show, that the owner, retaining the right of property and control of the Flushing, had been guilty of gross neglect, in permitting her to remain so long on Hampton Bar, and in a condition which rendered her a public nuisance. It was because the Flushing was improperly there, at the time, that she was injured by the collision, and did injury to the Louisiana. Even if the

Louisiana was in fault, then, as the most favorable result for the Flushing, the damages of both should have been blended and divided.

But that rule ought not to apply, in a case of public nuisance, especially as against one, who did not wilfully commit injury. The owner might have abandoned the wreck, and would thus have escaped responsibility. But, holding possession, responsibility attached.

White *vs.* Crisp, 10 Harlstone & Gordon, 321.
Brown *vs.* Mallett, 57 Eng. C. L. Reports, 599.
Newberry's Reports, 502.

Vide, also, for illustration,

Angell on Tide Waters, 111 to 115.
Angell on Highways, Secs. 227, 229.
The King *vs.* Ward, 4 Ad. & Ellis, 384.
S. C. 31 Eng. C. L. Rep. 92.
Dimes *vs.* Pelley, 15 Q. B. 276.
S C. 69 E. C. L. Rep. 276.

WILLIAM SCHLEY,
*For Appellant.*

# SUPREME COURT OF THE UNITED STATES.

**No. 98.**

**The Baltimore Steam Packet Company, owner of Steamer Louisiana,**

APPELLANT,

vs.

**The Flushing, College Point and New York Steam Ferry Company, owner of the Steamboat Flushing,**

APPELLEE.

*Appeal from the Circuit Court of the United States for the District of Maryland.*

## BRIEF FOR APPELLEE.

J. MASON CAMPBELL,
BERNARD CARTER,
For Appellee.

2 Wn Rob. 201

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## BRIEF FOR APPELLEE.

This case originated in the District Court of the United States for the Maryland District, upon a Libel in Admiralty, filed therein on 28th November, 1862, by the party who is the Appelle in this Court, against the Steamer Louisiana, belonging to the Appellant, who came into the District Court as Claimant and answered the Libel.

The Libel was filed to recover damages for injuries sustained by the Steamboat "Flushing," belonging to the Appellee, in a collision with the Steamer Louisiana in the harbor at Fortress Monroe.

*For Libel see Rec. pages* 2 *to* 4.
*For Answer see Rec. pages* 4 *to* 7.

The District Court, on a hearing of the case, dismissed the Libel, (Rec. 7.)

From this decree of the District Court the present Appellee appealed to the Circuit Court for the Maryland District, in which Court the depositions contained in the Record (Rec. p. 10 to 68) were taken; and the case was in that Court heard before the late Chief Justice TANEY, who upon a careful consideration of the whole case and upon full argument, REVERSED the decree of the District Court, and after referring the case to the Master to ascertain the extent of the damage sustained by the "Flushing" in the collision, signed a decree in favor of the present Appellee against the present Appellant for the sum of Twenty-seven hundred and five Dollars—each party to pay its own costs.

(*For Decree of Circuit Court see Rec. p.* 70.)

It is from this decree of the Circuit Court that the present Appeal is taken.

The circumstances attending the collision will be found fully stated in the Allegations of the Libel (p. 2,) and which, so far as our present purpose is concerned, are confirmed by the statements in the answer (p. 4).

The collision between the "Louisiana" and the "Flushing" occurred on Sunday, June 8th, 1862.

The Flushing at the time of the collision was lying aground on a place in Hampton Roads called Hampton Bar, having got aground there on the 28th March, 1862.

The Louisiana on the day of the collision arrived at Fortress Monroe from York River, and proceeded at some time of the morning, prior to 11 o'clock, A. M., to a wharf designated in the evidence as the "Old Wharf," to which she was made fast with lines; and there remained till 2 or 3 o'clock of that day, when she parted her lines and came into collision with the Flushing while lying aground on Hampton Bar, and damaged her to a considerable extent.

No question relating to the *Quantum* of the damages sustained by the "Flushing" in this collision is open in this Court, there having been no exceptions taken in the Circuit Court to the Report of the Master ascertaining the amount of damages.

The only question therefore is whether the Appellee is entitled to recover *any* damages.

The Appellee will contend as follows:

1st.—That supposing the collision was not the result of unavoidable accident or *vis major*, but on the contrary could have been avoided if those in charge of the Louisiana had exercised the care, skill and foresight they were bound to exercise; that then there is nothing in the fact that the Flushing was lying partly sunk on Hampton Bar which will prevent the Appellee from recovering for any demages sustained by the Flushing in the collision; and that the case is to be considered as one of a collision between a steamer in motion and one at anchor in a proper place.

2dly.—That the collision was not the result of unavoidable accident or *vis major;* but was on the contrary the result of the neglect of proper precautions on the part of those in charge of the Louisiana, and of the absence of the skill and care by the law required of them.

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These points will be considered in their order:

## FIRST POINT.

As to the position of the "Flushing" at the time of the collision.

The 1st article of the Libel alleges (Rec. p. 3,) that Hampton Bar, on which the Flushing lay, was entirely clear of the

channel, and out of the way altogether of vessels, steam or sail, coming into or going out from Fortress Monroe, or any other landing place.

The Answer asserts in its 1st article (Rec. p. 4) and its 9th art. (p. 7,) that the position in which the Flushing lay was a dangerous one for vessels or steamers passing to and fro, and that in the said position she was a public nuisance.

The evidence in the Record clearly shows that the Flushing as she lay aground on Hampton Bar, was in the way of no steamer or vessel of any kind; that on the contrary she occupied the *very place* which had been selected for the location of the Buoy to mark the Bar and to warn vessels off; that she got *aground* there because the Buoy had been carried away just before her arrival; and that moreover there was a pile of stones sunken on the spot on which she grounded, and that the damage which the Louisiana would have sustained at that spot on the day of the collision, would have been greater if the Flushing had not been there.

See in support of these statements—

*Rec. p.* 16. *Answer of Rogers to 4th Int.*
*Rec. p.* 18. *Answer of Dawson to 2d Int.*
*Rec. p.* 23. *Answer of Lippincott to 4th Int.*
*Rec. p.* 26. *Answer of Nimmo to 2d Int.*
*Rec. p.* 30. *Answer of Post to 12th Int.*
*Rec. p.* 51. *Answer of Ely.*
*Rec. p.* 45. *Porter.*
*Rec. p.* 57. *Cralle.*

It is clear therefore that such being the position occupied by the Flushing, the Appellant could not excuse the negligence of those in charge of the Steamer, even if it were true, as is alleged in the 7th and 9th Articles of the Answer, (Rec. 7) that the Appellee was guilty of negligence in allowing the Flushing to remain on the Bar from the 28th of March 1862,

on which day she was sunk (Rec. p. 26, Evidence of Nimmo) to the day of collision (8th June 1862.)

But the evidence shows that every effort was made to raise the Flushing, and that these efforts continued from the time she was sunk to the time she was raised, only interrupted by the condition of the weather.

See in support of this—

*Rec.* 26. *Ev. of Nimmo.*
*Rec.* 14. *Howe, Answer* 3*d.*
*Rec.* 16. *Rogers, Answer to* 3*d Int.*
*Rec.* 18. *Dawson,* " " "
*Rec.* 20. *Britt,* " " "
*Rec.* 22. *Lippincott,* 1*st and* 3*d.*

We contend therefore that the case between the two steamers is the same as if the Flushing had at the time of the collision been riding at anchor in a proper position.

1 *Parsons on Mer. Law*, 202.

It was held in the case of Ure *vs.* Coffman (19 How. 56) that where the place of anchorage is out of the line of customary and safe navigation the steamer in motion colliding is liable, though the anchored vessel had no light, and the night was dark.

*See also the The Batavia*, 10*th Jurist*, 19.

## SECOND POINT.

We come now to consider the 2d Point, as stated on page 3, of this Brief.

We contend that the Appellant is responsible for the damages caused by the collision in this case, unless it can show affirmatively that the collision was the result of "unavoidable accident" or as it is sometimes called *vis major*.

What is meant by this, is defined in the case of the *Girolamo*, 3 Haggard, 173, as "that which no human skill or precaution could have guarded against or prevented."

And by *Dr. Lushington in* 3 *W. Robinson*, 318, (*the Locklibo*).

And by this Court, in 24 Hazzard, 307. *The Union Steamship Co., vs. the N. Y. and Virginia S. Co.* "A collision which is to be held as the result of unavoidable accident, is a collision which occurs where both parties have endeavored by every means in their power, with due care and caution, and proper display of nautical skill, to prevent the occurrence of the accident."

The "precautions" spoken of, must be such as are necessary to guard not only against *ordinary* perils, but against *extra*-ordinary.—

*The Volcano*, 2 *W. Robinson*, 337.
*Vantine vs. Lake*, 2 *Wallace, Jr., Circuit Ct.*, 57, (*Grier, J.*)

The obligation to provide against extra-ordinary perils, is upheld in the case of the "Volcano," just cited, even where there was nothing to indicate their approach.

The negligence is the more culpable, if such precautions are neglected when the state of the case points out the approach of such perils.—

*Culbertson vs. Southern Belle*, 18 *Howard*, 584.
*Barque Lotty—Olcott's Adm. R.* 329.

The onus probandi in this case, is on the Appellant.—

*The Victoria*—3 *W. Robinson*, 52.

Tested by the principles established by the above quoted authorities, we think it clear that the evidence in the Record fails to show that this collision was the result of "unavoidable accident;" but on the contrary, we contend that those in charge of the Louisiana, were guilty of negligence, and failed to exercise even ordinary skill; and that to this negligence and absence of skill, is owing the collision.—

We shall contend in support of this position as follows:

1st.—That the Louisiana was not fastened to the wharf from which she broke away as securely as she might have been, nor in as favorable a position as the wharf afforded.

2dly.—That after she broke away, the collision could have easily been avoided without damage to the Louisiana or to other vessels, if those in charge of the Louisiana had made the proper use of her anchors.

3dly.—That the collision could also have been avoided if the course of the Louisiana had been directed in a skilful manner by the use of her steam power; and under this head we shall also contend, as alleged in the 5th Art. of the Libel, that there was not sufficient steam on the boat when she broke away to control her course.

*First*.—As to the breaking away from the wharf—

The old wharf at Fortress Monroe is 82 feet wide, (Rec. 50.) The Louisiana is 225 feet long, (Rec. 35); she came to this wharf on the day of the collision sometime between 9 and 11 o'clock, (Rec. 34, 38, 52); at this time the wind was blowing

from the North-East or East, (Rec. 38, Porter,) from which quarter it continued to blow all day, (Cralle 52; Nimmo 7th Ans. p. 27). The *tide* was *ebb* when the steamer first was fastened to the wharf, (Rec. 34, Porter); the tide changed to Flood at about one o'clock.

These facts are not disputed.

We shall contend, 1st, that on the day of the collision the wind was only blowing at the most what is styled "half a gale," and that its force, in connexion with the flood tide which was running when the steamer broke away, was only such as to require extra precautions, and not such as to have rendered it impossible for the Louisiana to remain at the wharf.

One important fact is here to be stated in the outset, which is testified to by all the witnesses on both sides, and that is, that among all the shipping in the harbour of Fortress Monroe on the day in question there was not another accident of any kind or description; not another collision, nor did any other vessel even drag an anchor.

For description given of the state of the weather at the time of the breaking away, and before, by the witnesses for Appellee, see as follows:

| | | |
|---|---|---|
| *Nimmo*, | *p.* 27, 28. | *Answer to 7th and 17th ints.* |
| *Post*, | *p.* 29, 30. | " *to 7th and 15th* " |
| *Lippincott*, | *p.* 23. | " *to 7th and 17th* " |
| *Rogers*, | *p.* 26. | " *to 7th* " |

These witnesses speak thus of the wind at the time of the collision "it was blowing strong North-East," "it was blowing a pretty taut breeze, a full sailing breeze, not a gale; not so but the Louisiana could have laid at the wharf, if she had been properly made fast;" "there was a stiff breeze of wind, a little more than ordinary;" "when the tide changed the

wind sprung up, blowing half a gale;" "it was blowing fresh, perhaps half a gale."

Porter, the Master of the Louisiana says (p. 38, top,) it was blowing "*almost* half a gale."

The question then is—Could the said steamer been so fastened to the wharf as to hold during this state of wind.

How stands the evidence on this Point.

First let us see what the judgment and opinions of the experts examined on this Point.

Capt. Nimmo (p. 28,) and Capt. Post (p. 30,) say they have seen steamers of same size as Louisiana lay at the same wharf on worse days, and lines did not part; and that there was nothing in the weather to prevent the Louisiana being kept at the wharf; and Lippincott, p. 24, (Answer to 17th int.,) Britt, (p. 22, same int.,) Dawson, (p. 20, same int,,) (Rogers, p. 17, same int.,) all say if the fastenings had been sufficient the boat on that day would have staid at the wharf.

Pearson, a witness for Appellant, and master of one of its boats, says (p. 63,) that his boat (the Georgeanna,) has lain at the same wharf, when the wind was blowing half a gale; his boat is 210 feet long; and when asked as to how of a boat of the same length exactly as the Louisiana, he dodges the question.

Against these positive opinions thus quoted, what does the Appellant offset?

Nothing but the *pretended* opinions of Porter and Cralle, who were respectively, Master and Mate of the Louisiana at the time of the collision.

These witnesses know that if the Appellant is held responsible, it must be because they were negligent.

They are interested therefore to maintain that no fastenings would have sufficed.

And accordingly, Porter (p. 40, at bottom, and p. 41, top,) says that "no lines, no matter what their strength, would hold the Louisiana in half a gale, at that wharf."

Let us see how utterly inconsistent *this* statement is with his *other* statements.

He was not on board when she broke away, he had gone up inside the Fortress (Rec. 35, top).

When he left, he knew the tide would soon turn, and that the wind would increase with it. (Rec. 38, 41.) He staid inside the Fort till about 3 *o. c.*, and then walked *leisurely* down towards the water (36 p. top, 41 p.). When he got down to where he could see the old wharf, and where he could see what was then the state of the wind, (Rec. 41,) he cast his eye casually towards the wharf where he had left his steamer, and had "no thought of her having been torn away," and expected when he cast his eye there, to see her there, and this after he saw the wind was blowing half a gale. (Rec. 41.)

How then can the Court believe him, when he says "*no* lines would hold her in half a gale," when he also says that though seeing it was blowing "half a gale," he had "no thought of her having blown away."

Again, he says (p. 41) when he left his steamer at 12½ o'clock, he had no apprehensions that she would break away, or else he would not have left her.

Now, is a "strong, stiff" breeze, the wind blowing "*half* a gale," so unusual and unlooked for a thing, that a Captain who had been accustomed for years to this port, (Rec. .) should not look to its occurence as a *possible* thing?

If then, he must be held to have considered its occurrence a *possible* thing, how is it that he left his steamer, "having no fears for her," if it be true that she could not be held there in such a state of wind?

Again he says (p. 41, 42.):

"I called my officers together, and we thought there were sufficient lines to hold her there in almost any wind, *and in half a gale.*"

His own evidence is that the wind blew on this occasion, "only almost half a gale." (Rec. .)

What then is his opinion worth on such subjects, when now he declares that no lines would hold her at that wharf in half a gale?

Now as to the Mate Cralle—

He was left in command by Porter when he left at noon (p. 42, top; p. 54, bottom,); and if the boat *could* have been held, of course on him rests the blame for her getting away.

He is determined to get rid of this; and says (p. 53,) I could not get any more lines to do any more good than what I had out, *according to my judgement.*

Compare this with the instructions which Capt. Porter admits he gave him when he left the boat in his charge.

Porter says he told Cralle to get out more lines if it came on to blow harder, and he thought more were necessary.

*Rec.* 41, 42.

But the worthlessness of any opinion of Cralle as to what would keep the Louisiana at the wharf is apparent from his recorded statements.

He says (Rec. p. 53.):

"According to my judgement she was sufficiently made fast to lay at that wharf."

Again, (at page 54,) when asked why he did not change the position of the boat, he says:

"I did not think there was any *necessity* for the change; we were lying *very nice* at *the wharf;* nor did I think it *necessary* to do more than I had done."

Again, (at page 56,) when asked how long before the steamer broke away did he anticipate that she would break away, he says:

"I did not anticipate her breaking away at all: I thought we had out lines sufficient to hold her;" and this though he was on the boat all the time.

It is clearly apparent therefore if we look only at the testimony of Capt. Porter and Cralle, that no other lines were put out, and no other precautions taken, because they both thought that there was no necessity for any additional lines or other precautions; and that they now, *after* the accident, desire to shield themselves from the consequences of their negligent omissions and easy satisfaction as to the security of the boat, by boldly asserting that even if they had taken other precautions they would have been of no avail.

But these bold assertions will not avail their employers, because we have shown above how grievously they were mistaken in their judgements that the steamer "was sufficiently fastened to hold there on that day."

But again—

If the evidence shows a neglect to take the prudent and proper precautions, this Court will not speculate as to what *might* have occurred, even if these precautions had been taken.

The evidence clearly shows such neglect, even if we look to the testimony of Porter and Cralle alone.

When taken to the wharf in the morning, and the ropes put out the tide was *ebb*, and the wind East; the tide and wind thus counteracting each other partly (Cralle Rec. 52,).

It was to accommodate his boat to this state of tide that her bow was put to the Westward by Porter, and her bow put abreast of the 82 feet of wharf, as against this portion was *then* the chief strain.

For the same reason double the number of lines were put out from her bow that were put out from the stern; and when the number of lines was increased at 11 o'clock, the same relative proportion was kept up, the tide being still *ebb*.—All

the fastening that was made of the boat, as well as the position in which she was placed, was to accommodate her to the *ebb* tide.

(*Ev. of Porter, Rec.* 38. *Cralle*, 52, 56.)

Porter (Rec. 38,) admits that after the tide changed the pressure on the stern lines of the boat, as compared with that on the bow lines, was much greater than had been the excess of the pressure on the bow lines over that on the stern lines before the tide changed;—and so says Cralle (p. 52,).

And yet, notwithstanding, the Capt. and Mate knew this, they yet left the lines by which the steamer was fastened, as they had been fixed to accommodate her to the ebb tide; the change of tide necessitated the total change of fastenings; in the morning the greater number had been needed at the bow; in the afternoon the greater number were needed at the stern; but all things were left as they had been in the morning.

Why were they left so?

Was it because Porter or Cralle thought that was the right way to have the lines fixed to withstand the double pressure of flood tide and wind coming from the same direction?

Not at all.

Porter and Cralle both say they knew better (Rec. p. 38,).

Why then were not the stern lines strenghtened?

Simply because they chose to run the risk of letting things stay as they were,—or as they say: "because they *thought* these lines would hold her against *any* wind." (*Rec.* 41, 42, 52, 53.)

But there is a portion of the evidence which shows that Porter was not only well aware that his steamer was not sufficiently fastened, to meet the pressure of the *flood* tide and wind, but that he gave positive instructions to his mate Cralle, to put out the very additional fastenings which we say would have prevented the accident.

We here refer to his statement made to Captain Nimmo, on the evening of the day of the collision.

For this statement, see evidence of Nimmo, Rec. p. 28, 18 Answer.

Capt. Porter denies that this confession was made by him. (Rec. 45.)

But there are two other witnesses, who depose to what Porter said when he went aboard the Louisiana, while she was afoul of the Flushing.—

*See Ev. of Britt, p. 22, and of Dawson, p. 20.*

The statement of Nimmo bears irresistible internal evidence of being true.

It gives a rational explanation of Porter's conduct in reference to his omission to put out extra lines at the stern, to provide against the Flood tide; which conduct, without this explanation is inexplicable in the face of his own statement, (Rec. 38,) that he knew such pressure would be so great.

If he did not tell his mate what Nimmo says he told him he had told his mate, then his negligence is on a par with that of Cralle.

That additional sterm lines should have been put out for the flood tide, is abundantly established by all of the witnesses for the Appellee.—

*See Ev. of Nimmo, p. 28, 15 int.*
*Capt. Post, p. 30, 15 int.*
*Lippincott, p. 24.*
*Britt, p. 22.*
*Rogers, p. 17.*

And indeed the best evidence of this theory is to be gathered from the facts attending the breaking away of the steamer.

She *parted her stern lines* first; and then being forced round with her *broad side* to wind and tide, she broke away at the bow; and while at the stern it was the *ropes* which parted; the ropes at the bow were so strong that the cleets and other

things to which the ropes were fastened gave way and were torn up. (Rec. 42, 36, 53.)

Some stress is laid by Capt. Porter and Cralle upon the cleets, capstan, &c., giving away as evidence of the violence of the wind and tide.

But this is all explained away on their cross-examination.

The cleets, capstan, &c., which gave away were those to which the bow lines were fastened; and these gave way when the stern lines had parted and the steamer had turned broadside to wind and tide; nothing could then hold her.

*Porter, p.* 42.
*Nimmo, p.* 28. 16*th Answer.*
*Post,* 30.
*Dawson, p.* 20.

Again, not only were ropes fastened in such a way as to adapt the boat to the ebb tide, but her *position* at the wharf was selected for this purpose.

Her bow was westward, and abreast of the wharf. This was her proper position for the ebb tide.

For the Flood tide especially with the wind from the East, her true position was with her bow to the Eastward, and abreast of the wharf.

*Evidence of Porter, p.* 39, 2*d question.*
*Cralle, p.* 52, 56.
*Nimmo, p.* 31.
*Capt. Post, p.* 30, *answer to* 15, *int.*

When Porter and Cralle are asked why they did not put her bow to Eastward, they both say that they did not think any change necessary. (p. 39, 46, 54.)

Though admitting that they could have changed her position preparatory to the change of the tide, if they had thought it necessary. Here again we have the same presumptuous reliance on slender precautions, when other resources were readily available.

Again, the *ropes* were relied on altogether. No anchor was thrown out while lying at the wharf. (Cralle, p. 56.)

Capt. Pearson (one of Appellant's Masters) says what he calls *mooring* is putting out anchors astern.

Now if it had been true that the Louisiana could not be held at that wharf by *lines* in half gale, then Capt. Porter was bound to know it, and have had his anchor out.

And here we notice once for all the great stress laid by the Appellant and his witnesses on the narrowness of the wharf (82 feet) as compared with the length of the Louisiana.

What avails this fact in lieu of the evidence?

Did not Porter see and know its width while his steamer lay there, and yet did he not wantonly refuse and neglect to take the precautions ready at hand to provide against the additional danger this very narrowness of wharf exposed his vessel to?

*See here How* 18, *How.* 584.
2 *Wallace, C. C.* 57.
*Olcott, Rep.* 329.

Does he not moreover say that he was perfectly satisfied she would lay at this wharf in any wind and tide? (Rec. 42)

But secondly:

Admitting that the steamer got adrift without negligence, it was owing to gross negligence on the part of Cralle, the Mate, that her course was not at once arrested by the use of anchors if he had no sea-room to use his steam with advantage.

The Flushing lay West of the New Wharf, which also lay West of the Old Wharf.

The steamer drifted Westwardly from the Old Wharf, broadside with the tide, with her bow to the shore or to the North. (Rec. p. 29, 23, 16.)

No anchor was dropped till just as the steamer approached the Flushing. (Cralle, p. 54, Dawson, p. 18).

The distance from the Old Wharf to the New Wharf is about 400 yards, and from the New Wharf to where the Flushing lay it is about the same distance. (Rec. 26, 23, 18, 16, 14).

The Louisiana, drifting westerly, drifted past the new wharf to the Flushing.

(*Rec.* 21, 18, 23.)

She had therefore drifted 700 yards before any anchor was thrown.

When ought the anchor to have been thrown?

Capt. Travers (a witness examined as an expert by the Appellant) says if there was no room to back the steamer, then *as she went adrift* he would have anchored. (Rec. p. 64, 65.)

Capt. Porter says (p. 44) that if there was not room to work her after she broke away, (and whether there was or not a glance around was sufficient,) he would have dropped his anchor *at once.*

The Appellee's witnesses all say that if the anchor had been dropped anywhere between the two wharves as she drifted, it would have brought her up.

(*Rec. p.* 27, 24, 19, 30, *all in answer to* 12*th Int.*)

Agian: we contend the anchor best adapted to arrest the steamer was not thrown at all. The largest and best anchor was the starboard anchor, which in this case was also the weather anchor.

The real reason why this was not used is because it was not *ready for use.*

(*Cralle, p.* 58; *Porter. p.* 44, *bottom.*)

That on this occasion it was his duty to have had it ready he admits, if his other statement is true that no lines could have held the boat at the wharf: for he says (Rec. p. 47,) it is usual to have both anchors at the catheads and ready for use when it is *blowing heavily*.

*See also Capt. Post's evidence, p.* 30.
*And see also the Volcano* 2, *W. Rob.* 337.

The experienced Captains examined by the Appellee all say that the weather anchor should have been let go.

(*Rec.* 30, 27, 24, 19, 17, 14, *all in answer to* 12*th Int.*)

The chain of the anchor thrown out did come in contact with the stern and snapped. (Dawson, p. 18.)

This too is in accordance with the theory stated by Captain Travers, p. 65. For Cralle states that it was dropped "aft." (Rec. 57.)

Capt. Travers also states (p. 64,) that if the steam was not available, he would have used the weather or largest anchor.

We contend thirdly:

That either there was no sufficient steam in the boiler to enable her machinery to work properly, or great want of skill was shown in her management after she got adrift.

1st.—All the witnesses say she "drifted;" many of them that she was carried by the motion of the waves. No direction was given to her motions. Her motions indicated want of steam. (Rec. p. 23, 16, 17, 18. 19, 31.)

The fact that she drifted towards Hampton Bar and against the Flushing, when her course lay in the opposite direction, is strong evidence to show that she had not motive power.

Nor do the Appellant's witnesses agree as to the movements of her machinery. Cralle says he only rung the Engineer's bell *twice*. (Rec. 54.) Horney, the Engineer, says it was wrung frequently. (Rec. 67.)

But whether she had sufficient steam or not, it is already made out by the evidence that there was plenty of sea room, for her to have kept clear of the Flushing and all other vessels on the day of the collision.

Her proper course was to have backed right off from the wharf.

*Nimmo, p.* 27.
*Travers, p.* 64.
*Howe, p.* 14, 4*th Ans.*

Her anchorage was in that direction, and in the opposite course from that in which she drifted. (p. 14, 26 )

There was room enough on all sides for her to go.—

*Rec.* 27, 8 *ans. p.* 29, *do., p.* 23, *do., p.* 21, *do., p.* 19, *do., p.* 16, 17, 18, *do.*

The Appellee submits that in all the three particulars above named, those in charge of the steamer Louisiana failed to take those precautions required by law of them.

And that at all events, the Appellant has failed to show that the collision was the result of unavoidable accident.

J. MASON CAMPBELL,
BERNARD CARTER.

*For Appellee.*